

No. 10890

United States
Circuit Court of Appeals
For the Ninth Circuit.

BRIAN CONNOLLY and DANIEL CONNOLLY,
Appellants,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Montana

FILED

NOV 24 1944

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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HONORABLE JOHN B. TANSIL,

United States District Attorney for the District
of Montana, Billings, Montana.

MR. R. LEWIS BROWN,

Assistant United States District Attorney for
the District of Montana, Butte, Montana.

MR. HARLOW PEASE

Assistant United States District Attorney for
the District of Montana, Butte, Montana.

MR. ANDREW G. SUTTON,

Assistant United States District Attorney for
the District of Montana, Billings, Montana.

MR. MERLE C. GROENE,

Assistant United States District Attorney for
the District of Montana, Billings, Montana.
Attorneys for Appellee and Plaintiff.

MR. JOHN W. COBURN,

Cut Bank, Montana.

MR. E. J. McCABE,

Great Falls, Montana.

MR. S. J. RIGNEY,

Cut Bank, Montana.

Attorneys for Appellants and Defendants.

[1*]

In the District Court of the United States in and
for the District of Montana
Great Falls Division.

No. 305.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BIRAN CONNOLLY and
DANIEL CONNOLLY,

Defendants.

Be It Remembered, that on November 22, 1941, a
Complaint was duly filed herein, in the words and
figures following, to-wit: [2]

[Title of District Court and Cause.]

COMPLAINT

The United States of America, a sovereign power,
by the Attorney of the United States, in and for
the District of Montana, acting under the author-
ity and direction of the Attorney General of the
United States, brings this suit against the above-
named defendant, and for its cause of action com-
plains and alleges as follows, to-wit:

I.

That the District Court of the United States, in
and for the District of Montana, has jurisdiction
herein, for the reason that the United States of
America is the party plaintiff.

II.

That the defendants, Biran Connolly and Daniel Connolly, are, one and both, citizens of the state and district of Montana, residing near the town of Blackfoot [3] in the county of Glacier, in the state and district of Montana.

III.

That the Blackfeet Indian Reservation was established by Executive Proclamation, pursuant to a treaty concluded between the plaintiff herein and the Blackfeet and other tribes of Indians, said Blackfeet Indian Reservation being thereafter diminished in the land area thereof by Article IX of an act to ratify and confirm an agreement with the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indians in Montana (28 Stat. 113), approved May 1, 1888, and Article I of Section 9 of the agreement with Indians of the Blackfeet Indian Reservation in Montana, dated and signed at Blackfeet Agency, Montana, on the 26th day of September, 1895, the said Blackfeet Indian Reservation embracing a tract of land within the present judicial district of Montana, which is set apart for the exclusive use and occupation of the Indians of the Blackfeet Indian Reservation in Montana, the boundaries of said diminished reservation now being defined by the terms of said agreements as follows:

Beginning at a point in the middle of the main channel of the Marias River opposite the

mouth of Cut Bank Creek; then up Cut Bank Creek, in the middle of the main channel thereof, twenty miles, following the meanderings of the Creek; thence due north to the northern boundary of Montana; thence west along said boundary to a point on the northern boundary of the reservation due north from the summit of Chief Mountain, and running thence south to said summit; thence in a straight line to the most northeasterly point of Flat Top Crag; Thence to the most westerly of the mouths of Divide Creek; thence up said Creek to a point where a line drawn from the said northeasterly point of Flat Top Crag to the summit of Divide Mountain intersects Divide Creek; thence to the summit of Divide Mountain; thence in a straight line to the Western extremity of lower [4] Two Medicine Lake; thence in a straight line to a point on the southern line of the right-of-way of the Great Northern Railway Company four miles west to the western end of the lower bridge across the North Fork of the Two Medicine River; thence in a straight line to the summit of Heart Butte, and thence due south to the southern line of the present reservation, which is a point on the north fork of Birch Creek, thence easterly down the north fork of Birch Creek to the main stream of Birch Creek; thence down Birch Creek, in the middle of the main channel thereof, to the Marias River; thence down the Marias River, in the middle of the main channel thereof, to the place of beginning;

that all lands and premises within said boundaries now constitute the Blackfeet Indian Reservation and are located within the state and district of Montana; that all of the lands hereinafter described are located and situated within the present boundaries of the Blackfeet Indian Reservation and are allotted Indian lands of Indians of the Blackfeet Indian Reservation in Montana, words of the plaintiff herein, and are lands and premises within the exclusive jurisdiction of this Court.

That the plaintiff was, at all the times herein mentioned, ever since has been, and now is, the absolute owner in fee simple of, and entitled through its Indian wards, as aforesaid, to the undisputed possession and control of all of the said lands and premises of the Blackfeet Indian Reservation.

IV.

That the above-named defendants, Biran Connolly and Daniel Connolly, are, one and both, Indian persons, wards of the Government of the United States and under the charge of the Superintendent in charge of the Blackfeet Indian Reservation, in the state and district of Montana. [5] That the defendant, Biran Connolly, is entitled to grazing privileges on said Blackfeet Indian Reservation for

255 head of cattle on the following described lands and premises:

Sections 23, 24, 25, 26, 27, 28, 33, 34, 35 and 36, Township 35 North, Range 9 West and the Southwest Quarter of Section 24, Southeast Quarter of Section 29, North Half Southeast Quarter, Northeast Quarter Southwest Quarter, East Half, Southeast Quarter Southwest Quarter, Section 28, the West Half West Half Section 27, the North Half Northeast Quarter, South Half North Half, Section 33, Township 34 North, Range 9 West. The Southeast Quarter Northwest Quarter, Southeast Quarter of Section 9, Northeast Quarter of Section 10, North Half, Northwest Quarter Southwest Quarter, Northeast Quarter Southeast Quarter, Section 15; Northwest Quarter, West Half Northeast Quarter, Section 15, Southeast Quarter Section 10, Southwest Quarter, South Half Northwest Quarter, Section 11, Township 33 North, Range 9 West.

V.

That for many months last past and in particular from on or about the 6th day of August, 1941, to and inclusive of the date of the filing of this complaint, the abovenamed defendants, Biran Connolly and Daniel Connolly, drove, or caused to be driven, drifted and allowed to drift, and herded upon the allotted lands and premises of said Blackfeet Indian Reservation, more particularly described, as follows:

Sections 23, 24, 25, 26, 27, 34 and 35, in Township 35 North, Range 10 West, Montana Principal Meridian; Sections 3 and 10, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 11 and 14, Township 35 North, Range 9 West, Montana Principal Meridian; Sections 20 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; Southwest Quarter of the Northeast Quarter of Section 22, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 16 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; North Half of Section 11, Township 35 North, Range 9 West, Montana Principal Meridian; and South Half Section 11, Township 35 North, Range 9 West, Montana Principal Meridian;

[6] and other lands and premises within the confines of said Blackfeet Indian Reservation, a large number of cattle, to-wit approximately 260 head, the exact number thereof being to the Attorney of the United States, in and for the District of Montana, unknown, and a large number of horses, to-wit: approximately 75 head, the exact number thereof being to the Attorney of the United States, in and for the District of Montana, unknown, causing said cattle and horses to graze and pasture on and upon said lands and premises and to eat and destroy the grasses and other feed and forage and herbage growing thereon;

That the driving, drifting and herding of said

Cattle and horses on and upon said lands and premises, as aforesaid, was done by the said defendants, Biran Connolly and Daniel Connolly, intentionally, knowingly, willfully, unlawfully, and without consent, and in open defiance of the plaintiff, its officers and agents, and without said defendants ever having at any of said times any permit or any other right or authority whatsoever to drive and ing said cattle and horses on and upon said lands and premises, and that the said defendants have at all the times hereinbefore mentioned, ever since have been, and now are driving, drifting and herding said cattle and horses on and upon said lands and premises without the consent of the plaintiff herein, its officers and agents, and without the consent and against the wishes of said Indians of the Blackfeet Indian Reservation, and without paying for the privilege of grazing and herding said cattle on and upon said allotted lands and premises on the Blackfeet Indian Reservation as aforesaid. [7]

VI.

That from on or about the 6th day of August, 1941, up to and including the date of the filing of this complaint, the said 260 head of cattle and 75 head of horses grazed on and upon said lands and premises as hereinbefore described and pastured upon said lands and premises, and destroyed the grasses, feed, forage and herbage growing thereon and are continuing so to do. That the said driving, drifting, herding, and grazing of said cattle and horses on and upon the allotted lands and premises

of said Blackfeet Indian Reservation, as aforesaid, have damaged the grasses and other feed and forage and herbage growing thereon in the sum of \$1,341.00.

VII.

That the plaintiff has repeatedly requested the above-named defendants, on divers occasions, to remove said cattle and horses from said lands and premises but that the defendants have always refused so to do and still refuse to do so; that the defendants are continuing to drive, drift, allow to drift, herd, and graze said cattle and horses on and upon said lands and premises and are now driving, drifting, and allowing to drift, herding, and grazing said cattle and horses on and upon said lands and premises and will continue so to do; that the defendants' willful and wrongful trespasses, upon said lands and premises, are continuous in their nature; and that the defendants are wholly insolvent and unable to respond in damages to the plaintiff and its Indian wards; that a multiplicity of suits will be necessary to protect and enforce the rights of the plaintiff and its Indian wards in said lands and premises, unless an injunction can be obtained to protect said lands and premises from the constant and unauthorized use by the said defendants; that [8] if the defendants are allowed to continue the willful and wrongful trespassing of their said cattle and horses on and upon said lands and premises, said lands and premises will become useless to the plaintiff and its Indian wards, and the

injuries and damages to be suffered by the plaintiff and its Indian wards will be impossible of computation, since it will be impossible to ascertain the damages to said lands and premises if the said defendants continue to willfully and wrongfully trespass their cattle and horses thereon; that unless an injunction is issued to protect the rights of the plaintiff and its Indian wards in said lands and premises, waste will be committed on said lands and premises by the grazing and pasturing of said cattle and horses thereon and by the trampling of the grasses, feed, forage and herbage growing thereon, by said cattle and horses—all to the great and irreparable damage of the plaintiff and its Indian wards, without an opportunity to collect damages from the above-named defendants.

VIII.

That the plaintiff further avers that the said defendants, Biran Connolly and Daniel Connolly, have willfully refused to move their cattle and horses from said lands and premises and continue and will continue to trespass on and upon said lands and premises and will permit their cattle and horses to eat and destroy the grasses, feed, herbage and other forage growing thereon, and to trample and destroy the same, and said defendants, one and both, refused to move their said cattle and horses upon instructions of authorized officers of the Indian Service when an injury is being done

to the range of the Blackfeet Indian Reservation by reason of the improper handling of said cattle and horses by the said defendants, and said defendants will not remove their said cattle and horses from said lands and premises unless compelled so to do. [9]

IX.

That the rated carrying capacity of the range on the said Blackfeet Indian Reservation is 24 acres per one head of cattle per year, based on a ten-month yearly period, and 36 acres per one head of horses per year, based on a ten-month yearly period, and 6 acres per one head of sheep per year, based on a ten-month yearly period.

X.

That the plaintiff, by reason of the foregoing, has no plain, adequate and complete remedy at law herein against the repeated trespassing of the defendants, and no remedy whatsoever, save in a Court of equity where matters such as those hereinabove set forth are cognizable.

Wherefore, the plaintiff prays that is recover damages, against the said defendants, in the sum of \$1,341.00; and that the plaintiff do have and recover its cost and disbursements herein laid out and expended.

The plaintiff further prays that a temporary injunction be issued against the above-named defendants, enjoining them from driving, drifting, allowing to drift, herding, or conveying any livestock

whatsoever on or upon, or permitting the same to be driven, drifted or allowed to drift, herded, or conveyed, or pastured, grazed, or fed on and upon any of the lands and premises hereinbefore described, or any part thereof, during the pendency of this action, save upon the lands and premises lawfully within the possession of the defendants; and that upon final hearing said injunction be made permanent and perpetual; and that the said defendants be required to show cause, if any they have, why an injunction pendente lite should not be issued to enjoin them from driving, drifting, allowing to drift, herding, or conveying any live- [10] stock whatsoever on or upon, or permitting the same to be driven, herded, drifted, or allowed to drift, or conveyed, pastured, grazed, or fed, on or upon any of the lands and premises hereinbefore described, or any part thereof, or otherwise interfering with the possession, use and enjoyment of said lands and premises by the plaintiff and its Indian wards.

And for such other and further relief in the premises as to the Court may seem meet and equitable.

JOHN B. TANSIL,

Attorney for the United
State, in and for the Dis-
trict of Montana.

ROY F. ALLAN

Assistant Attorney of the
United States, in and for
the District of Montana.

Attorneys for the Plaintiff.

United States of America

District of Montana—ss.

Roy F. Allan, being first duly sworn, upon his oath deposes and says:

That he is a duly appointed, qualified and acting Assistant Attorney of the United States, in and for the District of Montana, and as such, makes this verification to the foregoing complaint; that he has read the same and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

ROY F. ALLAN

Subscribed and sworn to before me this 22nd day of November, 1941.

[Seal]

C. G. KEGEL

Deputy Clerk of the United
States District Court, in
and for the District of
Montana. [11]

DESIGNATION AND CONSENT OF SERVICE

Comes Now John B. Tansil, Attorney of the United States, in and for the District of Montana, and Roy F. Allan, Assistant Attorney of the United States, in and for the District of Montana, and pursuant to Rule 34 of the Rules of Practice of the United States District Court for the District of Montana, hereby designate and consent that service of all subsequent papers, in the above-entitled action, except writs and process, may be made upon them, or either of them, as the attorneys for the

plaintiff, United States of America, at the office of the United States Attorney, 219 Federal Building, Billings, Montana.

JOHN B. TANSIL,

Attorney of the United
States, in and for the Dis-
trict of Montana.

ROY F. ALLAN

Assistant Attorney of the
United States, in and for
the District of Montana.

Attorneys for Plaintiff.

Address: Rooms 217, 219, 224, and 228, Federal
Building, Billings, Montana.

[Endorsed]: Filed Nov. 22, 1941. [12]

Thereafter on December 13, 1941, Summons was duly filed herein, in the words and figures following, to-wit: [13]

[Title of District Court and Cause.]

SUMMONS

The President of the United States of America
To Biran Connolly and Daniel Connolly, the above-
named defendants: Greeting:

You are hereby summoned and required to serve
upon Roy F. Allan, Assistant Attorney of the
United States, in and for the District of Montana,
Plaintiff's attorney, whose address is Room 219,
Federal Building, Billings, Montana, an answer

to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

C. R. GARLOW

Clerk of the District Court
of the United States, in
and for the District of
Montana.

By C. G. KEGEL

Deputy Clerk.

Dated this 22nd day of November, 1941.

JOHN B. TANSIL,

Attorney of the United States,
in and for the District of
Montana.

ROY F. ALLAN,

Assistant Attorney of the
United States, in and for
the District of Montana.

Address: Room 219, Federal Bldg., Billings, Montana. [14]

RETURN ON SERVICE OF WRIT

United States of America,
District of Montana—ss.

I hereby certify and return that I served the annexed Summons on the therein-named Biran Connolly and Daniel Connolly by handing to and leaving a true and correct copy thereof with each of them personally at 27 miles northeast of Brown-

ing in said District on the 3rd day of December, 1941.

E. LIEBERG

U.S. Marshal

By EDGAR TAYLOR,

Deputy.

[Endorsed]: Filed December 13, 1941. [15]

Thereafter, on December 13, 1941, Order to Show Cause was duly filed herein, in the words and figures following, to-wit: [16]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

Be It Remembered that the plaintiff in the above-entitled cause, having commenced an action in the District Court of the United States, in and for the District of Montana, Great Falls Division, against the above-named defendants, Biran Connolly and Daniel Connolly, and having prayed for an injunction against said defendants requiring them to refrain from certain acts in said complaint and hereafter more particularly mentioned:

Now, on reading the complaint on file in said cause, duly verified by the oath of one of the plaintiff's attorneys, Roy F. Allan, Assistant Attorney of the United States, in and for the District of Montana; and it appearing to me therefrom that there are sufficient grounds for granting an order to show cause, why an injunction should not be granted; no

undertaking for security being required to be given on the part of the applicant, the United States of America, the plaintiff herein; and [17]

Now, Therefore, it is Hereby Ordered, by the Court, that the defendants herein, Biran Connolly and Daniel Connolly, appear before this Court on the 8th day of December, 1941, at ten o'clock in the forenoon of said day, at the Courtroom in the Federal Building, in the city of Great Falls, in the County of Cascade, in the state and district of Montana, or as soon thereafter as counsel may be heard, to show cause, if any they have, why they, the said defendants Biran Connolly and Daniel Connolly, should not be enjoined and restrained from their unlawful driving, drifting, allowing to drift, herding, or conveying of any livestock on or upon, or permitting the same to be driven, drifted, herded or conveyed or pastured, or fed on or upon any of the lands and premises more particularly described, as follows, to-wit:

Sections 23, 24, 25, 26, 27, 34 and 35, in Township 35 North, Range 10 West, Montana Principal Meridian; Sections 3 and 10, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 11 and 14, Township 35 North, Range 9 West, Montana Principal Meridian; Sections 20 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; Southwest Quarter of the Northwest Quarter of Section 22, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 16 and 21, Township 35 North, Range

9 West, Montana Principal Meridian; North Half of Section 11, Township 35 North, Range 9 West, Montana Principal Meridian; and South Half Section 11, Township 35 North, Range 9 West, Montana Principal Meridian.

And it is Further Ordered, by the Court, that a copy of the complaint and a copy of this order be served on the above-named defendants, Biran Connolly and Daniel Connolly, at least two days before the appearance date hereinbefore in this order set forth. [18]

Dated at Great Falls, Montana, this 22nd day of November, 1941, at 3:40 p.m. o'clock in the afternoon of said day.

CHARLES N. PRAY,

Judge of the United States
District Court, in and for
the District of Montana.

Entered Nov. 22, 1941.

[Endorsed]: Filed Dec. 13, 1941. [19]

Thereafter, on December 16, 1941, a Preliminary Injunction was duly filed herein, in the words and figures following, [20] to-wit:

[Title of District Court and Cause.]

PRELIMINARY INJUNCTION

The President of the United States to Biran Connolly and Daniel Connolly and all of their officers,

agents, servants, employees, attorneys, and all those in active concert or participation with them,
Greeting:

In the above-entitled action, plaintiff having filed its duly verified complaint, in which, among other things, it prays for an injunction, and it appearing to the above-entitled Court that a preliminary injunction should issue in the premises for the reasons following:

It appearing that for many months last past, and in particular from on or about the 6th day of August, 1941, to and inclusive of the date of the filing of the plaintiff's complaint, the above-named defendants, Biran Connolly and Daniel Connolly, drove, or caused to be driven, drifted, or allowed to drift, and herded upon the allotted lands and premises of the said Blackfeet Indian Reservation, as hereinafter more particularly described, and other allotted Indian lands and premises within the confines of the said Blackfeet Indian Reservation, approximately two hundred sixty head of cattle, and [21] approximately seventy-five head of horses, causing said cattle and horses to graze and pasture on or upon said Indian lands and premises, and to eat and destroy the grasses and other feed and forage and herbage growing thereon; that the driving, drifting and herding of said cattle and horses on and upon said lands and premises, as aforesaid, was done by the said defendants intentionally, knowingly, willfully, unlawfully and without the consent and in open defiance of the plaintiff, its officers and agents, and without the said defendants ever having

at any of said times any permit or other right or authority whatsoever to drive, and herd said cattle and horses on or upon said Indian lands and premises, and that the said defendants have at all of the times herein mentioned ever since, have been and now are driving, drifting and herding said cattle and horses on and upon said lands and premises without the consent of the plaintiff herein, its officers and agents, and without the consent and against the wishes of said Indians of the Blackfeet Indian Reservation, and without paying for the privilege of grazing, herding and feeding said cattle and horses on and upon said allotted lands and premises of the Blackfeet Indian Reservation, as aforesaid;

No bond or undertaking being required of the plaintiff, the United States of America:

Now, Therefore, you, the said Biran Connolly and Daniel Connolly, the above-named defendants, and all of your officers, agents, servants, employees, attorneys and all those in active concert and participating with you, are hereby absolutely enjoined and restrained during the pendency of the above-entitled action, and until its final determination or until the Court shall otherwise order, [22] from driving, drifting, allowing to drift, herding or conveying any livestock on or upon, or permitting the same to be driven, drifted, allowed to drift, herded or conveyed or pastured, grazed or fed on or upon any of the lands and premises hereinafter described, as follows, to-wit:

Sections 23, 24, 25, 26, 27, 34 and 35, in Township 35 North, Range 10 West, Montana Principal Meridian; Sections 3 and 10, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 11 and 14, Township 35 North, Range 9 West, Montana Principal Meridian; Sections 20 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; Southwest Quarter of the Northeast Quarter of Section 22, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 16 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; North Half of Section 11, Township 35 North, Range 9 West, Montana Principal Meridian; and South Half Section 11, Township 35 North, Range 9 West, Montana Principal Meridian.

Given Under My Hand and the seal of the District Court of the United States in and for the District of Montana, this 11th day of December, 1941.

C. R. GARLOW,

Clerk of the above-entitled
Court.

By C. G. KEGEL

Deputy Clerk.

ACKNOWLEDGMENT OF SERVICE

Due and Personal Service of the within and foregoing preliminary injunction made and admitted

and the receipt of a true copy thereof acknowledged this 13th day of December, 1941, pursuant to the oral stipulation entered into in open court at Great Falls, Montana, on December 8, 1941, by and between the attorneys of record herein, in the presence of and with the consent of the defendants, and extended on the minutes of the Court whereby said defendants requested and consented that said preliminary injunction be served on them by mail in order to save to said defendants the Marshal's costs of service thereof.

JOHN W. COBURN

Attorney for the Defendants.

[Endorsed]: Filed Dec. 16, 1941. [23]

Thereafter, on October 19, 1942, the Answer of Daniel Connolly was duly filed herein, in the words and figures following, to-wit: [24]

[Title of District Court and Cause.]

ANSWER

For answer to the complaint of the plaintiff in the above entitled action the defendant Daniel Connolly admits and denies as follows, towit:

I.

Admits the allegations of paragraphs I, II, III, IV and IX.

II.

Denies the allegations of Paragraphs V, VI, VII, VIII and X.

Wherefore having fully answered the complaint of the plaintiff the defendant Daniel Connolly prays judgment that plaintiff's complaint be dismissed as to this defendant and for such other and further relief as may be equitable just and proper.

E. J. McCABE

Attorney for defendant.

Suite 2 Liberty Theater Bldg.

Great Falls, Montana

[Endorsed]: Filed Oct. 19, 1942. [25]

Thereafter, on October 19, 1942, the Amended Answer of Brian Connolly was duly filed herein, in the words and figures following, to-wit: [26]

[Title of District Court and Cause.]

AMENDED ANSWER OF BRIAN CONNOLLY

The above named defendant Brian Connolly in answer to the complaint of the plaintiff in the above entitled action admits, denies and alleges as follows, towit:

FIRST

I.

Admits the allegations of paragraphs I and II thereof.

II.

Save and except as hereinafter in this answer qualified defendant admits the allegations of paragraph III of said complaint.

III.

Admits the allegation of paragraph IV of said complaint and alleges that said defendant is entitled to grazing privileges on the Blackfeet Indian Reservation on lands other than and additional to the lands described in paragraph IV as hereinafter in this answer set forth and described.

IV.

Admits the allegation of paragraph V of said complaint save and except that defendant denies that approximately 260 head of cattle and approximately 75 head of horses were driven [27] or drifted or allowed to drift or herded upon said described lands and alleges the fact to be that the total number of head of horses and cattle driven, drifted, allowed to drift or herded upon the said lands by this defendant did not exceed a total of 255 head or the equivalent thereof as hereinafter set forth, and defendant denies that his acts in connection of grazing and pasturing of said described lands were unlawful or without the consent or in open defiance of the plaintiff, its officers or agents and denies that said defendant did not have at any of said times any permit or right or other authority to drive or herd cattle and horses upon said lands and premises and denies that either at the time of filing the complaint in said action or at any time since this defendant was or now is driving or drifting

or allowing to drift or herding cattle or horses upon said lands and premises without the consent of the plaintiff or its officers or agents or without the consent or wish of the Indians of the said Blackfeet Reservation without paying for the privileges of herding cattle and horses on said lands and alleges the fact to be that the said defendant had the express permission and consent and authority of the plaintiff its officers and agents and of the Indians of the Blackfeet Indian Reservation to graze and herd the cattle and horses grazed and herded and allowed to graze and herd upon the described lands by this defendant all of which hereinafter more fully appears.

V.

Denies the allegation of paragraph VI of said complaint and alleges that the cattle and horses not exceeding 255 head or the equivalent thereof as hereinafter set forth, grazed and herded on said lands by defendant were grazed and herded in conformity with express permission, consent and authority of the plaintiff its officers and agents and the Indians of the Blackfeet Indian Reservation, and denies that the grasses, feed, and forage, and [28] herbage or any thereof growing on the said described lands were damaged in the sum of money said in paragraph VI or in any sum or in any manner.

V.

Denies this defendant at the time of filing the complaint or theretofore drove, drifted, and allowed

to drift, cattle and horses upon said lands and premises and are now driving, drifting and allowing to drift and graze cattle and horses upon said lands and premises to a number greater than the said defendant was authorized and permitted to do by plaintiff its officers and agents and Indians of Blackfeet Indian Reservation, and denies that defendant will hereafter graze or drive or drift or allow to drift or herd cattle or horses in a greater number than said defendants shall have permission, consent or authority from plaintiff and the Indians of the Blackfeet Indians Reservation to do, and denies that defendant trespassed upon said lands and premises. Further answering said paragraph this defendant denies that he is either insolvent or unable to respond in damages to the plaintiff and its Indian wards and denies that a multiplicity of suits or any suit or suits will be necessary to protect and enforce the rights of the plaintiff and its Indian Wards in the said lands and premises unless an injunction can be obtained to protect said lands and premises. Save and except as hereinabove or hereinafter admitted or qualified this defendant denies the allegations of said paragraph VII.

VII.

Save and except as in this answer admitted or qualified defendant denies the allegation of paragraph VII of said complaint.

VIII.

Admits the allegation of paragraph IX of said complaint.

IX.

Denies the allegation of paragraph X of plaintiff's complaint. [29]

SECOND

Further answering the complaint of the plaintiff this answering defendant alleges as follows, to-wit:

I.

That on or about the first day of November 1940 the plaintiff made and entered into a written agreement with this answering defendant and one Fred Chouquette designated "Grazing Permit" and which agreement was and is generally known and referred to by the plaintiff and permittees grazing livestock upon the Blackfeet Indian Reservation as an "on and off grazing permit" and that under the terms and provisions of said written agreement the plaintiff, in consideration of the payment to the said plaintiff of the sum of \$276.00 payable on November 1, 1940 the sum of \$500.52 payable during the year of 1941 and \$552.00 payable during the year 1942 granted unto this defendant and said Fred Chouquette the express *and* right to graze and herd upon certain lands embracing approximately 5780 acres, described in paragraph IV of the complaint for the period commencing November 1, 1940 and ending April 30, 1943 and that said written agreement contemplated a grazing period of twelve months during each year and that it is and has been the recognized custom and practice

for more than twenty years last past by and between the plaintiff and by the permittees of the plaintiff grazing livestock on said Indian Reservation under agreements of the aforementioned character, that, under such an agreement permittees in lieu of grazing livestock upon the lands described during a continuous twelve month period of the maximum number of livestock specified in the agreement in any one year might graze and had the absolute right to graze a greater number of livestock for a shorter period on such land and the increased number to be grazed for a shorter period was and is to be computed by adding to the number of livestock specified in the permit accordingly as the period of actual grazing in the year [30] bears to the total period of one year. To illustrate the method adopted, if the permittee grazed the land in the permit for a ten month period only then he would be entitled to increase the number of livestock specified in the permit during said ten month period in the proportion the two months not grazed bore to the twelve month period or any increase of $\frac{1}{6}$ of the number of livestock specified to be grazed for the twelve month period. That during the year of 1941 the defendant had the right, under said permit to graze a total of 510 head of livestock for a six month period and that defendant intended to graze and did actually graze livestock not to exceed 309 in number upon said land for a period of not more than six months during the year 1941. That at no time did defendant knowingly graze or

permit to graze or drive or permit to drive, herd or permit to herd, pasture or permit to pasture, feed or permit to feed an excess of 255 head of cattle, or the equivalent thereof as in this paragraph hereinbefore stated. That during said period the said defendant had other lands in his possession and control for the pasturing, grazing, and feeding of livestock and that if at any time any livestock in the possession of defendant, and pastured on other lands, grazed or pastured or fed or drifted or were herded upon the land described in the complaint same was done without the knowledge of this defendant and in any event the number of such livestock added to the 309 head hereinabove mentioned would be less than the number defendant had the right to pasture and graze upon the land described in the complaint.

THIRD

Further answering the complaint of the plaintiff this defendant alleges:

I.

That all of the land described in paragraphs IV and V of plaintiff's complaint are open unfenced lands chiefly suitable [31] for livestock grazing purposes.

II.

That he is a member of the Blackfeet Indian Tribe and entitled to and has the absolute vested right, in common with all the members of the Blackfeet Indian Tribe, to permit cattle, horses and other

livestock individually owned by members of such tribe to roam at large and graze upon all unfenced lands situate within the exterior boundaries of the lands embraced within the area of land known generally as the Blackfeet Indian Reservation.

III.

That such right in each and all members of the Blackfeet Indian Tribe was recognized by plaintiff and accorded to the Blackfeet Tribe by the Treaty entered into between the plaintiff and the said Blackfeet Indian Tribe in the year 1855 and that during all of the period from the time of the making of aforesaid Treaty the members of the Blackfeet Tribe have interpreted, and believed, such Treaty conferred such rights upon the members of said Tribe and have accordingly exercised such right with the knowledge and consent of the plaintiff and the members of such Tribe and are now exercising such right with full knowledge of plaintiff. That defendant is informed and believes and therefore alleges that the institution of the within suit is the first time that such right has ever been attempted to be denied to an Indian of said Blackfeet Indian Tribe and further alleges on information and belief that members of the Blackfeet Indian Tribe generally are exercising aforesaid right with the knowledge and acquiescence of the plaintiff.

FOURTH

Further answering plaintiff's complaint this answering defendant alleges:

I.

That from time immemorial there has existed among the Indians [32] of the Blackfeet Indian Tribe the long and well established custom of each member of said tribe having the absolute vested right, of allowing livestock, owned by such member to roam at large and graze upon the lands to which the said tribe claimed the right of occupancy, and exercising such right freely without interference by said tribe or by any member thereof. That said custom has for time immemorial been at all times recognized and observed by the said tribe and the members thereof as being one of the laws of the tribe binding upon the members of the tribe collectively and individually and that the defendant as an Indian member of the Blackfeet Indian Tribe has the right and is entitled to permit his livestock to roam and range at large and graze upon the open unfenced lands embraced within the interior boundaries of the Blackfeet Indian Reservation described in paragraph III of plaintiff's complaint, and such right is a valuable incorporeal property right owned and possessed by said defendant and the exercise of which is guaranteed to him under the constitution, treaties and laws of the United States.

Wherefore defendant prays judgment that plaintiff's complaint be dismissed and that judgment be entered in favor of defendants.

E. J. McCABE

Liberty Theater Building

Great Falls, Montana

Attorney for Defendant Brian
Connolly

[Endorsed]: Filed Oct. 19, 1942. [33]

Thereafter, on October 28, 1942, a Motion to Strike was duly filed herein, in the words and figures following, to-wit: [34]

[Title of District Court and Cause.]

MOTION TO STRIKE

Come Now the above-named Plaintiff, the United States of America, by and through the undersigned, its attorney of record herein, and respectfully moves the Court to strike matters contained in the amended answer of Brian Connolly, one of the above-named defendants, on filed herein as follows, to-wit:

1. From, including and after the words "and it is and has been the recognized custom," appearing at the end of line 20 and the beginning of line 21 of paragraph I of the defendant's further answer to the complaint of the plaintiff on page 4 of said amended answer of the defendant, Brian Connolly, down to and including the words and figures

“for a period of not more than six months during the year 1941.”, on line 12 of paragraph I on page 5, upon the grounds that said matter is immaterial; and

2. From, including and after the words “That during said period the said defendant”, on line 17 of paragraph I on [35] page 5 of said amended answer, down to and including the word “complaint”, on line 26 of paragraph I on page of said amended answer, upon the grounds that said matter is immaterial; and

3. All of paragraphs number II and III of the defendant’s further answer to the complaint of the plaintiff appearing on page 6 of said answer, upon the grounds and for the reason that said matter is:

(a) immaterial

(b) impertinent; and

4. All of paragraph numbered I of the defendant’s further answer to the plaintiff’s complaint starting on page 6 of defendant’s said answer and continuing through line 18 on page 7 thereof, upon the grounds that said matter is:

(a) redundant

(b) immaterial

(c) impertinent

And the Plaintiff, the United States of America, prays the Court for such other and further relief in the premises as may be just, with its costs.

Dated this 27th day of October, 1942.

ROY F. ALLAN

Assistant Attorney of the United States, in and
for the District of Montana.

Attorney for the Plaintiff.

[Endorsed]: Filed Oct. 28, 1942. [36]

Thereafter, on April 16, 1943, an Order Sustaining Motion to Strike was duly entered herein, in the words and figures following, to-wit: [37]

[Title of District Court and Cause.]

ORDER ENDORSED ON BACK OF MOTION
TO STRIKE FROM AMENDED ANSWER

The motion in the within entitled cause came on regularly for consideration. Apparently the matters offered in defense and sought to be eliminated by plaintiff relate to Treaties, Statutes and Customs, either not now in force or not in issue so far as the allegations of the complaint are concerned, and the Statutes and Regulations supporting them, and upon which such allegations are based. The Court being duly advised and good cause appearing therefor the said Motion to Strike is hereby sustained.

CHARLES N. PRAY,
Judge

Entered April 16, 1943. [38]

Thereafter, on June 28, 1943, a Petition and Stipulation for Modification or Injunction was duly filed herein, in the words and figures following, to-wit: [39]

[Title of District Court and Cause.]

PETITION FOR MODIFICATION OF
INJUNCTION

To the Honorable Charles N. Pray:

Your petitioners Brian Connolly and Daniel Connolly the defendants in the above entitled action by and through the undersigned E. J. McCabe their attorney of record respectfully petitions your Honorable Court and represents as follows:

That your petitioner Brian Connolly is the owner of a stock grazing permit upon certain lands located on the Blackfeet Indian Reservation within the State of Montana and that heretofore your petitioner Brian Connolly applied to the United States Forestry Department and the Interior Department and office of Indian Affairs for a grazing permit to be issued to said petitioner Brian Connolly to Sections 1, 2, 3, and 4 Township 34 North Range 9 West of the M.P.M. and that final action on said application for permit was deferred by reason of the fact that the aforesaid Section 3 T. 34 N. Range 9 West was included in an injunction heretofore issued in the above entitled action under date of December 11, 1941 and that your petitioner can obtain the said grazing permit upon the lands applied for as aforesaid if the court will modify the above mentioned injunction as to exclude said Section 3

from prospective and future operations and effect thereof,

That the United States District Attorney for the District of [40] Montana in compliance with the consent of the United States Indian Agent, F. H. McBride, at Browning Montana and the Forestry said injunction to enable your said petitioner to Department, has signed a written stipulation consenting to the modification of the said injunction which stipulation is hereto annexed and hereby incorporated in and made a part of the within petition.

Wherefore your petitioner respectfully prays an order of your Honorable Court modifying aforesaid injunction to exclude Section 3 Township 34 North Range 9 West from the prohibition contained in obtain grazing permit upon the lands hereinabove set forth and described and for such other relief as may be meet in the premises.

E. J. McCABE

Attorney for Defendants. [41]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the undersigned attorneys of record for the plaintiff and defendants in the above entitled action that the petition of Brian Connolly and Daniel Connolly for modification of the injunction in the above entitled action and to which petition the within stipulation is hereto annexed, be allowed and granted by the court and that said injunction be modified as

to exclude Section 3 Township 34 North Range 9 West M.P.M. from the future and prospective operations and effects of the injunction.

Dated this 26th day of June 1943.

JOHN B. TANSIL

United States District At-
torney for the District of
Montana.

by ROY F. ALLAN

Asst U. S. Attorney
Attorney for Plaintiff

E. J. McCABE

Attorney for Defendants.

[Endorsed]: Filed June 28, 1943. [42]

Thereafter, on June 28, 1943, an Order Modifying Injunction was duly filed and entered herein, in the words and figures following to-wit: [43]

[Title of District Court and Cause.]

ORDER MODIFYING INJUNCTION

Upon reading and filing the petition of the above named defendants praying for an order of the court modifying the injunction, heretofore issued and filed in the above entitled action, and the stipulation of the parties to said action consenting to the modification of the injunction as petitioned for by said defendants and the court being duly advised:

It Is Hereby Ordered that the preliminary In-

junction heretofore issued in the above entitled action on the 11th day of December 1941 be and same is hereby modified to eliminate from the future and prospective restrictive operation of said injunction the following described tract of land only, situate in Glacier County, Montana to-wit:

Section Number 3, Township 34, North
Range 9 West Montana Principal Meridian;

to enable the defendant Brian Connolly to have issued to him by the proper authorities of the United States, a grazing permit embracing said particularly described tract of land and other lands.

Done this 28th day of June, 1943.

CHARLES N. PRAY

Judge.

[Endorsed]: Filed and Entered: June 28, 1943.

[44]

Thereafter, on October 29, 1943, the Decision of Court was duly filed herein, in the words and figures following to-wit: [45]

In the District Court of the United States in
and for the District of Montana

No. 305

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BIRAN CONNOLLY and DANIEL CONNOLLY,
Defendants.

DECISION OF COURT

The plaintiff seeks injunctive relief and damages in the above entitled cause against the defendants,, who are Indian wards of the plaintiff and members of the Blackfeet Tribe of Indians, for unlawful trespass by defendants' livestock on certain allotted Indian lands of the Blackfeet Indian Reservation, in Montana.

Plaintiff contends that defendants have "no right to trespass upon the allotted Indian lands of their less ambitious and less fortunate fellow tribesmen in violation of the rules and regulations that have been established by the Secretary of the Interior, in accordance with the act of Congress."

The Court has considered the evidence in this case and is of the opinion that there can be no question that the material allegations of the complaint have been sustained by clear and convincing proof in respect to a wilful trespass by the defendants in repeatedly permitting their livestock to graz on the lands of their neighbors. That the Secretary of the Interior has ample authority to

make rules regulating the grazing of livestock on an Indian Reservation is found in the Act of Congress of June 18, 1934 (48 Stat. 986; 25 U.S.C.A. 466) wherein it is provided as follows: "The Secretary of the Interior is directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, to assure full utilization of the range, and like purposes."

Counsel for the government has set forth the pertinent rules and regulations adopted and promulgated by the Secretary of the [46] Interior pursuant to authority conferred by the statute above quoted, and they appear to be fair and reasonable and well within the scope of the statute.

While there are some discrepancies in the testimony of the witnesses as contended by counsel for defendants, there is sufficient credible testimony to satisfy the court that the defendants have been trespassing as alleged in open violation of the statute and regulations, resulting in damage to the property of others, although warned by the Government representatives on the reservation to desist. That the attitude and intent of the defendant, Brian Connolly is clearly shown in his violation of the temporary injunction issued by this court in this cause. On many occasions the witnesses observed the Con-

nolly horses and cattle in trespass both before and after the commencement of this suit. The evidence shows that his livestock scattered for a distance of ten to twelve miles from his range unit. His explanation was that the cattle had strayed, and in answer to a question in that respect replied that they had always done that. To show conditions as they existed about the time this case was tried, Mr. Stephenson, a government representative, testified that on May 3rd, 1943, a few days before the trial, he had observed 16 head of horses and 3 cows in trespass.

The only question now with which the court is particularly concerned and raised by defendants' counsel is whether the evidence is sufficiently definite and certain as to the specific damages alleged, such as damage to grasses and other feed and forage and herbage growing on said lands and whether a penalty can be imposed under the pleadings and in view of the ruling in *U. S. v. Ash Sheep Co.* (D. C. Mont.) 252 U. S. 157, 170, relied upon by defendants' counsel, to the effect that a court in granting equitable relief will not add the collection of a penalty, an action for the statutory penalty being one strictly at law in which the defendants would have the right of trial by jury; that in the present case the defendants went to trial on the plaintiff's theory that the action was primarily equitable with compensatory damages as incidental and under that theory waived the right to have a jury pass on the issue of compensatory damages; that there is nothing in the complaint suggesting

the recovery of any penalty, the prayer [47] being for injunction, compensatory damages, and such "other and further relief as may seem meet and equitable." Counsel now claims that by the complaint having led the defendants to believe the plaintiff did not seek recovery of a penalty, plaintiff would not be permitted to change the theory to the prejudice of the defendants.

In reply to the argument of defendants that they have been deprived of the right of trial by jury, Rule 38 of the Rules of Civil Procedure provides for trial by jury of any issue triable of right by jury, and the failure of a party to serve a demand as required by this rule and to file it as required by Rule 5 (d) constitutes a waiver by him of trial by jury. From a perusal of the allegations of the complaint it appears that the statutory provisions upon which plaintiff could rely for recovery are suggested by the facts alleged although no specific reference is made to the recovery of a penalty as provided in Section 179 of Title 25 U. S. C. A. Plaintiff in the brief contends that this section is one of the controlling factors of the measure of damages in the case and contributes such penalty in addition to the actual damages suffered by the Indian allottees. Rule 8 (e) 2 provides that: " * * * * * A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11."

In the Ash case, *supra*, cited by defendants, the court held: "While the amount of the statutory penalty for the trespass was prayed for in the equity suit, yet the trial court, saying that equity never aids the collection of such penalties, *Marshal v. Vicksburg*, 15 Wall. 146, 149, and that no evidence of substantial damage had been introduced, limited the recovery to one dollar and costs * * *." Here the claim of penalty was based upon trespass by sheep on Indian lands under Sec. 2117 Revised Statutes of the United States, and was recovered in an action at law, filed subsequent to the equity suit.

As will be noted the rule provides that a party may state as many claims as he has, and here the claims and facts alleged and established show the number of livestock in trespass, clearly indicating the application of the above section as a penalty, although [48] the prayer does not mention it in so many words. Under the rules and their interpretation by the courts counsel for the defendants could have had a jury on the questions of damages and penalty if they had fully considered what provisions of the statutes and regulations might be invoked by plaintiff, if the facts alleged were proven. Under the practice established by the rules of civil procedure there is no distinction between actions at law and suits in equity. To permit the imposition of a penalty it is not necessary to consider whether this case should have been begun originally as a law action or as a suit in equity, and, it does not appear that it would make any difference whether counsel

had specifically demanded in the complaint the remedies to which plaintiff would be entitled. The court should grant the relief to which a party is entitled even though demand for such relief has not been made in the pleadings. (Rule 54 (c), 28 U. S. C. A. following Sec. 723c).

As it seems to the court, whether the complaint in this action is regarded as an action at law, with equitable relief incidentally prayed for, or whether the complaint be considered as an action at law and a suit in equity joined, the parties are, as a matter of right, entitled to a trial by jury on all legal issues raised, if demand for a jury is made as the rules provide. *Fitzpatrick v. Sun Life Assurance Co.*, 1 F. R. D. 713; *Ransom, et al vs. Staso Milling Co.*, 2 F. R. D. 128.

Consequently, having considered the arguments of counsel, the law and the proof, the court is now of the opinion that a penalty of \$258, as prayed for, should be imposed against the defendants, with costs in favor of plaintiff, and that One Dollar in addition thereto should be assessed as nominal damages, because of insufficiency of proof as to specific items of damage as alleged in the complaint, also that the temporary injunction heretofore issued be made permanent, and it is so ordered.

Findings and Conclusions and form of Judgment in conformity herewith, may be submitted.

CHARLES N. PRAY

Judge

[Endorsed]: Filed Oct. 29, 1943.

Thereafter, on December 20, 1943, the Findings of Fact and Conclusions of Law was duly filed herein, in the words and figures following, to-wit: [50]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Cause Came On Regularly for trial before the Court, sitting without a jury, at Great Falls, Montana, on Thursday, May 6, 1943, the Honorable Charles N. Pray, Judge of the District Court of the United States, in and for the District of Montana, presiding—a jury trial having been waived by the parties, under and by virtue of the provisions of Rule 38(d) of the Rules of Civil Procedure for the District Courts of the United States, in that no demand for a trial by jury of any issue triable of right by a jury was made in writing or endorsed upon a pleading by any of the parties to said action. Roy F. Allen, Assistant Attorney of the United States, in and for the District of Montana, appearing for the plaintiff, and E. J. McCabe, Esquire, appearing as the attorney for the defendants. The Court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been argued by the respective parties, and briefs having been submitted by the respective parties, and the case being submitted to the Court for decision, and after deliberating thereon, and being fully advised in the premises, the Court finds the facts as follows: [51]

FINDINGS OF FACT

I.

That the District Court of the United States, in and for the District of Montana, has jurisdiction herein, for the reason that the United States of America is the party plaintiff.

II.

That each and every allegation contained in Paragraphs II, III and IX of the plaintiff's complaint is true.

III.

That it is true that the defendants, Biran Connolly and Daniel Connolly, are, one and both, Indian persons, wards of the government of the United States and under the charge of the Superintendent in charge of the Blackfeet Indian Reservation, in the State and District of Montana; and that the defendant, Biran Connolly, was entitled to specific grazing rights and privileges on the Blackfeet Indian Reservation at the time of the filing of the plaintiff's complaint herein, on certain lands and premises on said Blackfeet Indian Reservation as more particularly described in Paragraph IV of the plaintiff's complaint on file herein; but that said lands and premises, on which the defendant, Biran Connolly, had said grazing rights and privileges, were in no wise involved in or made the subject of this action.

IV.

That for many months prior to and including the date of the filing of the plaintiff's complaint, the defendants, Biran Connolly and Daniel Connolly,

willfully drove and otherwise conveyed livestock of horses and cattle and willfully caused and allowed their said livestock to range and feed on lands and premises belonging to their Indian neighbors on said Blackfeet Indian Reservation and to trespass on the lands of thier said Indian neighbors on said [52] Blackfeet Indian Reservation, without the consent of said Indians, and in open defiance of the plaintiff, its officers and agents, and without said defendants ever having had at any said time any permit or other right or authority whatsoever to drive and herd, or otherwise convey, said livestock of said defendants on and upon said Indian lands and premises of the Blackfeet Indian Reservation.

V.

That the defendants are subject to the penalty provided for by Section 179, Title 25, United States Code, in the amount of \$1.00 per head for the livestock of said defendants that said defendants drove and conveyed to range and feed on the lands and premises belonging to their Indian neighbors on said Blackfeet Indian Reservation without the consent of said Indians, as follows, to-wit: the 25 head of horses in willfull trespass on July 25, 1941, the 48 head of horses and the 25 head of cattle in such trespass on August 6, 1941, the 25 head of horses and 45 head of cattle in willfull trespass on August 8, 1941, the 32 head of horses in such trespass on August 13, 1941, and the 36 head of horses and 22 head of cattle in willfull trespass on October 21, 1941—making the total penal sum of \$258.00.

VI.

That it is true that the defendants, Biran Connolly and Daniel Connolly, one and both, willfully refused to remove their trespassing cattle and horses from the lands and premises of their Indian neighbors on said Blackfeet Indian Reservation, and said defendants willfully continued to allow their said livestock to trespass upon said lands and premises, and said defendants per- [53] mitted their said livestock to eat and destroy the grasses, feed, herbage and other forage growing thereon, and to trample and destroy the same, and said defendants, one and both, refused to remove their said livestock when requested and upon the instructions of authorized officers of the United States Indian Service, when injury was being done to the range of said Blackfeet Indian Reservation, by reason of the improper handling of said livestock by said defendants, and said defendants would not remove their said livestock from said Indian lands and premises of said Blackfeet Indian Reservation until compelled so to do.

VII.

That the plaintiff, by reason of the foregoing, has no plain, adequate and complete remedy at law herein against the repeated trespassing of the defendants and no remedy whatsoever, save on the equity *said* of this Court, where such willfull trespasses are cognizable.

CONCLUSIONS OF LAW

From the foregoing facts, the Court concludes, as its conclusions of law:

1. That the plaintiff is entitled to judgment in the amount of \$258.00 for the penalty provided by Section 179, Title 25, United States Code, for the willfull driving and otherwise conveying stock of horses and cattle, and the willfull causing and allowing of said livestock to range and feed on the lands and premises belonging to Indians and the willfull trespassing of the livestock of said defendants on the lands of their Indian neighbors on said Blackfeet Indian Reservation, without the consent of said Indians.

2. That the plaintiff is entitled to judgment, against the above-named defendants, in the amount of \$1.00 for nominal damages [54] for the trespassing of the defendants' livestock on said lands and premises of the Blackfeet Indian Reservation.

3. That the plaintiff is entitled to judgment, against said defendants, for its cost of action herein laid out and expended.

4. And, that the plaintiff is further entitled to have a perpetual injunction issued against the above-named defendants, one and both, and all their agents, servants, employees, attorneys and lessees, and all others acting in aid of or assistance of said defendants, or either of them, and all those in active concert or participating with said defendants, or either of them, forever restraining and absolutely enjoining them, or either of them, or any of them,

from driving, drifting, allowing to drift, herding, or conveying any livestock whatsoever, on or upon, or permitting the same to be driven, drifted, or allowed to drift, herded or conveyed, or pastured or grazed, or fed on or upon, or otherwise interfering with the possession, use or enjoyment of the plaintiff and its Indian wards on any of the lands and premises, or any part thereof, more particularly described as follows, to-wit:

Sections 23, 24, 25, 26, 27, 34 and 35, in Township 35 North, Range 10 West, Montana Principal Meridian; Section 10, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 11 and 14, Township 35 North, Range 9 West, Montana Principal Meridian; Sections 20 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; Southwest Quarter of the Northwest Quarter of Section 22, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 16 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; North Half of Section 11, Township 35 North, Range 9 West, Montana Principal Meridian; and South Half Section 11, Township 35 North, Range 9 West, Montana Principal Meridian;

All Done and Dates, at Billings, Montana, this 20th day of December, 1943.

CHARLES N. PRAY

Judge of the District Court
of the United States, in and
for the District of Montana

Due and personal service of the within and foregoing Findings of Fact and Conclusions of Law made and admitted and the receipt of a true copy thereof acknowledged this 7th day of December, 1943.

E. J. McCABE

Attorney for the Defendants.

By NINA SUNDQUIST

Stenograhepr

[Endorsed]: Filed Dec. 30, 1943.

Thereafter, on December 24, 1943, a Judgment was duly filed and entered herein, in the words and figures following, to-wit: [57]

In the District Court of the United States

In and for the District of Montana

Great Falls Division

Civil Action, File No. 305

UNITED STATES OF AMERICA,

Plaintiff,

v.

BIRAN CONNOLLY, and

DANIEL CONNOLLY,

Defendants.

JUDGMENT

Be it Remembered: That the above-entitled

cause came on regularly for trial before the court, sitting without a jury, at Great Falls, Montana, on Thursday, the 6th day of May, 1943, the Honorable Charles N. Pray, Judge of the District Court of the United States, in and for the district of Montana, presiding. A jury trial having been waived by the parties, under and by virtue of the provisions of Rule 38 (d) of the Rules of Civil Procedure for the District Courts of the United States, in that no demand for a trial by jury of any issue triable of right by a jury was made in writing or endorsed upon a pleading by any of the parties to said action. Roy F. Allan, Assistant Attorney of the United States, in and for the district of Montana, appearing as the attorney for the plaintiff, and E. J. McCabe, Esquire, appearing as the attorney for the defendants. The plaintiff having commenced its action against the defendants for a preliminary and permanent injunction requiring said defendants to refrain from certain actions in its complaint on file herein and [58] hereinafter more particularly set forth, and for damages against said defendants, and a preliminary injunction having been heretofore, by order of this Court, duly given, made and entered in said cause on the 16th day of December, 1941, after a hearing upon notice to show cause; both the plaintiff and the defendants having submitted evidence before the court, argues said cause orally, and submitted written briefs thereon, for the consideration of the Court; and the Court being fully advised in the premises both as to the law and the facts, and hav-

ing filed its written decision herein and its findings of fact and conclusion of law, and having directed that judgment be entered in accordance therewith;

Now, Therefore, it is Hereby Ordered, Adjudged, and Decreed, by the Court, and the Court does hereby order, adjudge and decree:

(1) That a permanent injunction issued out of this Court, addressed to the defendants, Biran Connolly and Daniel Connolly, one and both, and all of their agents, servants, employees, attorneys and lessees, and all others acting in aid of or assistance of them, or of either of them, and all those in active concert or participating with them, or either of them, forever restraining and absolutely enjoining them, or either of them, or any of them, from driving, drifting, allowing to drift, herding, or conveying any livestock whatsoever, on or upon, or permitting the same to be driven, drifted, or allowed to drift, herded or conveyed, or pastured, or grazed, or fed, on or upon the land and premises hereinafter described, or otherwise interfering with the possession, use, and *enjoinment* of the plaintiff and its Indian wards of any of said lands and premises, or any part thereof, which said lands and premises are now more particularly described as follows, to-wit:

Sections 23, 24, 25, 26, 27, 34 and 35 in Township 35 North, Range 10 West, Montana Principal Meridian; Section 10, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 11 and 14, Township 35 North, Range 9 West, Montana Principal Meridian; Sections 20 and 21, Township 35 North, Range 9 West,

Montana [59] Principal Meridian; Southwest Quarter of the Northeast Quarter of Section 22, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 16 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; North Half of Section 11, Township 35 North, Range 9 West, Montana Principal Meridian; and South Half Section 11, Township 35 North, Range 9 West, Montana Principal Meridian;

(2) That the plaintiff is entitled to judgment against the defendants, Biran Connolly and Daniel Connolly, in the amount of \$258.00 for the penalty provided by Section 179, Title 25, United States Code, for the willful driving and otherwise conveying stock of horses and cattle, and the willful causing and allowing of said livestock to range and feed on the hereinbefore described lands and premises belonging to Indians and the willful trespassing of the livestock of said defendants on the lands of their Indian neighbors on said Blackfeet Indian Reservation, as hereinbefore described, without the consent of said Indians.

(3) That the plaintiff is entitled to judgment, against the above-named defendants, in the amount of \$1.00 for nominal damages for the trespassing of the defendants livestock on said lands and premises of the Blackfeet Indian Reservation, as hereinbefore more particularly described.

(4) That the plaintiff is entitled to judgment, against said defendants, for its cost of action herein laid out and expended.

All Done In Open Court, this 24th day of December, 1943.

CHARLES N. PRAY,

Judge of the District Court
of the United States, in and
for the District of Montana.

[Endorsed]: Filed and Entered Dec. 24, 1943.

[60]

Thereafter, on December 24, 1943, a Notice of Entry of Judgment was duly filed herein, in the words and figures following, to-wit: [61]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To Biran Connolly and Daniel Connolly, the above-named defendants, and to E. J. McCabe, their attorney of record herein:

Notice Is Hereby Given and you and each of you will hereby take notice that a judgment on the decision of the Court and its Findings of Facts and Conclusions of law, in the above-entitled cause, was made, rendered and entered on said cause on the 24th day of December, 1943, a true copy of which said judgment is here served upon you and made a part hereof.

Please govern yourselves accordingly.

Dated this 24th day of December, 1943.

ROY F. ALLAN

Assistant Attorney of the
United States, in and for
the District of Montana.

[62]

AFFIDAVIT OF MAILING

United States of America
State and District of Montana
County of Yellowstone—ss.

Nadine Malmin, being first duly sworn upon her oath, deposes and says: That she is a citizen of the United States and a resident of the State of Montana, and is over the age of eighteen years, and not a party to or interested in the above-entitled action; that she is a stenographer in the office of the Attorney of the United States for the District of Montana, Attorney for the plaintiff named in the hereto attached Notice of Entry of Judgment; and that said Attorney resides and has his office at Billings, Montana; that E. J. McCabe, attorney for the defendants Biran Connolly and Daniel Connolly, resides and has his office at Great Falls, Montana; that there is a regular communication by United States mail between Billings, Montana, and Great Falls, Montana; that on the 24th day of December, 1943, this affiant deposited in the United States Post Office at Billings, Montana, a true and correct copy of the foregoing Notice of Entry of Judgment, enclosed in an envelope securely sealed, addressed to Mr. E. J. McCabe, Attorney at Law,

Great Falls, Montana, the attorney for the defendants, at Great Falls, Montana, and sent the same under Government frank, being the official frank of the United States Attorney for the District of Montana, no postage thereon being required for the transmittal thereof.

NADINE MALMIN

Subscribed and sworn to before me this 24th day of December, 1943.

[Seal]

ROY F. ALLAN

Notary Public for the State
of Montana, residing at
Billings, Montana.

My commission expires June 29, 1944.

[Endorsed]: Filed Dec. 24, 1943. [63]

Thereafter, on December 31, 1943, a Notice of Intention of defendant Brian Connolly to Move for a New Trial and Motion for New Trial was duly filed herein, in the words and figures following, to-wit: [64]

[Title of District Court and Cause.]

NOTICE OF INTENTION OF BRIAN CON-
NOLLY TO MOVE FOR A NEW TRIAL.

To The Plaintiff Above Named and to John B. Tansil, Esq., United States District Attorney, attorney for plaintiff:

You and each of you will please take notice that

on the 20th day of January, 1944, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the courtroom of the above entitled court in the Federal Building in the city of Great Falls, Cascade County, Montana, the above named defendant, Brian Connolly, by E. J. McCabe his attorney, intends to move the court to vacate and set aside the findings of fact and conclusions of law heretofore made and filed in the above entitled cause, and the judgment heretofore rendered and entered thereon, and to grant a new trial of the above entitled action to said named defendant. Said motion will be made upon all of the files, records, and proceedings and the minutes of the court in said action and upon affidavits and will be made upon the following grounds and reasons, to wit:

[65]

1. Irregularity in the proceedings of the court, and orders of the court, and abuse of discretion, by which defendant was prevented from having a fair trial.

2. Accident or surprise, which ordinary prudence could not have guarded against;

3. Insufficiency of the evidence to justify the findings of fact and conclusions of law of the court.

4. Insufficiency of the evidence to justify the decision of the court.

5. Insufficiency of the evidence to justify the judgment rendered and entered in said cause.

6. That the findings of fact and conclusions of law made by the court in said cause are against law.

7. The decision of the court in said cause is against law.

8. The judgment made and entered in said cause is against law.

9. Errors in law occurring at the trial and excepted to by the defendant.

A copy of said proposed motion to be filed and made in said cause is herewith delivered to and served upon you.

E. J. McCABE

Attorney for defendant Brian
Connolly. [66]

[Title of District Court and Cause.]

MOTION OF BRIAN CONNOLLY
FOR A NEW TRIAL

And Now, the above named defendant, Brian Connolly, by his attorney, E. J. McCabe, moves the court to set aside and vacate the findings of fact and conclusions of law heretofore made and filed in the above entitled cause, and to vacate and set aside the judgment heretofore rendered and entered in said cause, and to grant the said named defendant a new trial of the said cause, and in support hereof the said named defendant assigns the following reasons:

1. Irregularity in the proceedings of the court and orders of the court and abuse of discretion by which defendant was prevented from having a fair trial in that the learned court erred in granting

the motion of plaintiff to strike from the amended answer of Brian Connolly filed in said action allegations of fact which appear in paragraph I pages 4 and 5, and paragraphs II and III on page 6, and paragraph I on pages 6 and 7 of said amended answer, whereby the said defendant was precluded from establishing defenses [67] which he had by treaty and custom as a member of the Blackfeet Indian Tribe and the defense of practical interpretation and recognition by the plaintiff of the existence of the vested right of grazing livestock on Blackfeet Tribal Lands in members of said tribe.

2. Accident and surprise which ordinary prudence could not have guarded against, in that the complaint in the action sought injunctive relief and incidental compensatory damages without any claim for assessment of any penalty against the defendants and in reliance upon the allegations of the complaint as being wholly in the nature of an action in equity in which defendants would not be entitled to a jury trial, and being led to believe by such allegations and the prayer for relief that no punishment of defendants by way of a penalty was or would be sought. This defendant did not ask for a jury trial on the question of assessment of a penalty and said defendant was informed by his attorney that since the question of a penalty being imposed was not an issue in the case, defendant was not entitled to ask for a jury trial as a matter of right, and by reason thereof, defendant did not request a jury trial of any of the issues of the action.

3. Insufficiency of the evidence to justify either

the decision of the court or the findings of fact of said court to the effect that defendants willfully caused or willfully permitted their cattle and horses to be driven upon or grazed upon any lands upon which said cattle and horses were not entitled to be grazed, and to the effect that defendants are subject to a penalty provided for by section 179 Title 25 United States Code of \$1.00 per head for livestock driven and conveyed to range and feed on lands belonging to their Indian neighbors on the Blackfeet Indian Reservation in the penal sum of \$258.00, and;

Insufficiency of the evidence to justify the findings of fact numbered VI and VII made by the Court; and; [68]

Insufficiency of the evidence to justify the conclusions of law of the Court numbered 1, 2, 3, and 4, made in said cause.

4. Insufficiency of the evidence to justify the judgment of injunction in said cause and insufficiency of the evidence to justify the judgment for nominal damages of \$1.00 and insufficiency of the evidence to justify the judgment of \$258.00 as a penalty in that no actionable trespass was established by the evidence and no evidence warranting the imposition of a penalty in the sum of \$258.00.

5. That the findings of fact numbered IV, V, VI, and VII made by the court are against law and conclusions of law numbered 1, 2, 3, and 4 made by the Court are against law.

6. That the decision of the Court in said cause is against law.

7. That the judgment made and entered in said cause is against law.

8. Errors in law occurring at the trial and excepted to by the defendant as follows:

(a) The learned court erred further during the trial of said cause in sustaining the objection to the following questions propounded to witness Brian Connolly on direct examination, in view of the purposes stated at the time:

“Q. And during the time that you have been there residing and leasing these various units upon which you range your stock, do you know whether or not it has been the practice of residents of the Reservation to permit their stock to run at large?

Mr. Allan: We object to this. There is no such thing as custom. The Reservation is governed by regulations by the Secretary of the Interior and Indian Affairs. It has nothing to do with this case whatsoever.” (p. 89 Tr.)

“Q. Do you know whether or not there has been a custom among the Blackfeet Indians on the Blackfoot Reservation relative to running their stock at large on that Reservation?

Mr. Allan: Again renewing the objection. We object to any testimony as to custom because the matter is now covered by regulations.

The Court: I don't think that is an issue here. I think we threshed that out on your motion to strike.” (p. 91 Tr.) [69]

(b) The learned court further erred during the trial of said cause in sustaining the objection of

plaintiff to the following question propounded to witness Brian Connolly by his counsel:

“Q. Now, you have been examined on cross examination about a resolution relative to free grazing on the Blackfoot Indian Reservation. Will you please state whether or not that resolution, whether it passed or not, has been a subject of discussion with the Blackfeet Tribal Council?

A. Yes sir.

Mr. Allan: We object to such resolution. The resolution speaks for itself, and it is the best evidence.

The Court: Well, I think so. The resolution was passed first, and was revoked.

Mr. McCabe: We are going to show there was a dispute with some members of the Council; it was never adopted, and some said it was, and in order to obviate that question there was a resolution introduced repealing that resolution.

The Court: Objection sustained as the matter is going into the proceedings of the Council.” (p. 109 Tr.)

The within motion is made upon all the files, records, proceedings, and minutes of the court in said cause, and upon affidavits to be hereafter filed and served in support of the motion.

E. J. McCABE

Attorney for defendant Brian
Connolly. [70]

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

United States of America

State of Montana

County of Cascade—ss.

E. J. McCabe, being duly sworn upon his oath deposes and says:

That he is the attorney for defendant Brian Connolly in the above entitled action and that he resides and maintains his office at Great Falls, Cascade County, Montana, and that John B. Tansil, Esq., U. S. District Attorney for the District of Montana, is the attorney for the plaintiff in said cause and resides and maintains his office at Billings, Montana;

That on the 30th day of December, 1943, affiant deposited true and correct copies of the annexed notice of intention of Brian Connolly to move for a new trial and motion of Brian Connolly for a new trial in a securely sealed envelope, addressed to "John B. Tansil, Esq. U. S. District Attorney for the District of Montana, Billings, Montana," with postage thereon fully prepaid and deposited said envelope so addressed in the United States Post Office at [71] Great Falls, Montana, on the 30th day of December, 1943, for transmission and

delivery in regular course of mail to the said John B. Tansil, Esq. attorney for plaintiff.

E. J. McCABE

Subscribed and sworn to before me on the 31st day of December, 1943.

[Seal] G. C. RYAN

Notary Public for the State of Montana residing at Great Falls, Montana. My commission expires July 25, 1945.

[Endorsed]: Filed December 31, 1943. [72]

Thereafter, on December 31, 1943, a Notice of Intention of defendant Daniel Connolly to Move for a New Trial, and Motion for New Trial was duly filed herein, in the words and figures following, to-wit: [73]

[Title of District Court and Cause.]

NOTICE OF INTENTION OF DANIEL CON-
NOLLY TO MOVE FOR A NEW TRIAL

To The Plaintiff Above Named and To John B. Tansil, Esq., United States District Attorney, attorney for plaintiff:

You and each of you will please take notice that on the 10th day of January, 1944, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, at the courtroom of the above entitled court in the Federal Building in the city of Great Falls, Cascade County, Montana, the above named

defendant, Daniel Connolly, by E. J. McCabe his attorney, intends to move the court to vacate and set aside the findings of fact and conclusions of law heretofore made and filed in the above entitled cause, and the judgment heretofore rendered and entered thereon, and to grant a new trial of the above entitled action to said named defendant. Said motion will be made upon all of the files, records, and proceedings and the minutes of the court in said action and will be made upon the following grounds and reasons, to wit: [74]

1. Irregularity in the proceedings of the court, and orders of the court, and abuse of discretion, by which defendant was prevented from having a fair trial.

2. Accident or surprise, which ordinary prudence could not have guarded against.

3. Insufficiency of the evidence to justify the findings of fact and conclusions of law of the court.

4. Insufficiency of the evidence to justify the decision of the court.

5. Insufficiency of the evidence to justify the judgment rendered and entered in said cause.

6. That the findings of fact and conclusions of law made by the court in said cause are against law.

7. The decision of the court in said cause is against law.

8. The judgment made and entered in said cause is against law.

9. Errors in law occurring at the trial and excepted to by the defendant.

A copy of said motion to be filed and made in said cause is herewith delivered to and served upon you.

E. J. McCABE

Attorney for defendant Daniel
Connolly. [75]

[Title of District Court and Cause.]

MOTION OF DANIEL CONNOLLY
FOR A NEW TRIAL.

And Now, the above named defendant, Daniel Connolly, by his attorney E. J. McCabe, moves the court to set aside and vacate the findings of fact and conclusions of law heretofore made and filed in the above entitled cause, and to vacate and set aside the judgment heretofore rendered and entered in said cause, and to grant the said named defendant a new trial of the said cause, and in support hereof the said named defendant assigns the following reasons:

1. Insufficiency of the evidence to justify either the decision of the court or the findings of fact of said court to the effect that defendants willfully caused or willfully permitted their cattle and horses to be driven upon or grazed upon any lands upon which said cattle and horses were not entitled to be grazed, and to the effect that defendants are subject to a penalty provided for by section 179 Title 25 United States Code of \$1.00 per head for

livestock driven and conveyed to range and feed on lands belonging to their Indian neighbors on the Blackfeet Indian Reservation in the penal sum of \$258.00, and;

Insufficiency of the evidence to justify the findings of fact numbered VI and VII made by the court, and; [76]

Insufficiency of the evidence to justify the conclusions of law of the Court numbered 1, 2, 3, and 4, made in said cause.

2. Insufficiency of the evidence to justify the judgment of injunction in said cause and insufficiency of the evidence to justify the judgment for nominal damages of \$1.00 and insufficiency of the evidence to justify the judgment of \$258.00 as a penalty in that no actionable trespass was established by the evidence and no evidence warranting the imposition of a penalty in the sum of \$258.00.

3. That the findings of fact numbered IV, V, VI, and VII made by the court are against law and conclusions of law numbered 1, 2, 3, and 4 made by the Court are against law.

4. That the decision of the court in said cause is against law.

5. That the judgment made and entered in said cause is against law.

6. Errors in law occurring at the trial and excepted to by the defendant as follows:

(a) The learned court erred further during the trial of said cause in sustaining the objection to the following questions propounded to witness

Brian Connolly on direct examination, in view of the purposes stated at the time:

“Q. And during the time that you have been there residing and leasing these various units upon which you range your stock, do you know whether or not it has been the practice of residents of the Reservation to permit their stock to run at large?

Mr. Allan: We object to this. There is no such thing as custom. The Reservation is governed by regulations by the Secretary of the Interior and Indian Affairs. It has nothing to do with this case whatsoever.” (P. 89 Tr.)

“Q. Do you know whether or not there has been a custom among the Blackfeet Indians on the Blackfoot Reservation relative to running their stock at large on that Reservation?

Mr. Allan: Again renewing the objection. We object to any testimony as to custom because the matter is now covered by regulations.

The Court: I don't think that is an issue here. I think we threshed that out on your motion to strike.” (p. 91 Tr.) [77]

(b) The learned court further erred during the trial of said cause in sustaining the objection of plaintiff to the following question propounded to witness Brian Connolly by his counsel:

“Q. Now, you have been examined on cross examination about a resolution relative to free grazing on the Blackfoot Indian Reservation. Will you please state whether or not that res-

olution, whether it passed or not, has been a subject of discussion with the Blackfeet Tribal Council?

A. Yes sir.

Mr. Allan: We object to such resolution. The resolution speaks for itself, and it is the best evidence.

The Court: Well, I think so. The resolution was passed first, and was revoked.

Mr. McCabe: We are going to show there was a dispute with some members of the Council; it was never adopted, and some said it was, and in order to obviate that question there was a resolution introduced repealing that resolution.

The Court: Objection sustained as the matter is going into the proceedings of the Council." (P. 109 Tr.)

The within motion is made upon all the files, records, proceedings, and minutes of the court in said cause.

E. J. McCABE

Attorney for defendant Daniel Connolly. [78]

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

United States of America

State of Montana

County of Cascade—ss.

E. J. McCabe, being fully sworn upon his oath deposes and says:

That he is the attorney for defendant Daniel Connolly in the above entitled action and that he resides and maintains his office at Great Falls, Cascade County, Montana, and that John B. Tansil, Esq., U. S. District Attorney for the District of Montana, is the attorney for the plaintiff in said cause and resides and maintains his office at Billings, Montana;

That on the 30th day of December, 1943, affiant deposited true and correct copies of the annexed notice of intention of Daniel Connolly to move for a new trial and motion of Daniel Connolly for a new trial, in a securely sealed envelope, addressed to "John B. Tansil, Esq. U. S. District Attorney for the District of Montana, Billings, Montana," with postage thereon fully prepaid and deposited said envelope so addressed in the United States Post Office at [79] Great Falls, Montana, on the 30th day of December, 1943, for transmission and delivery in regular course of mail to the said John B. Tansil, Esq. attorney for plaintiff.

E. J. McCABE

Subscribed and sworn to before me on this 31st day of December, 1943.

[Seal] G. C. RYAN

Notary Public for the State of Montana residing at Great Falls, Montana. My commission expires July 25, 1945.

[Endorsed]: Filed December 31, 1943. [80]

Thereafter, on January 10, 1944, the Affidavit of Brian Connolly in Support of Motion for New Trial was duly filed herein, in the words and figures following, to-wit: [81]

[Title of District Court and Cause]

AFFIDAVIT OF BRIAN CONNOLLY IN
SUPPORT OF MOTION FOR A NEW TRIAL

United States of America

State of Montana

County of Glacier—ss.

Brian Connolly, being first duly sworn upon his oath deposes and says: That he is one of the defendants named in the above entitled action and that he makes this affidavit in support of his motion for a new trial heretofore filed and served in the said action;

That prior to the time the above entitled action was set down for trial and at the time when he retained E. J. McCabe of Great Falls, Montana to act as his attorney in said action, he inquired of his said attorney as to whether he could have a

trial of said cause by a jury and was informed by his said attorney at that time that the above entitled action was an equitable action for injunctive relief with the claim for compensatory damages as relief incidental to the main relief sought by way of injunction, and that said action was of a character known and referred to generally as an equitable action in which defendants were not entitled to a jury trial, and that since no penalty or forfeiture by way of punishment was sought in the action that he could not obtain a separation of causes of action and a trial by jury. That affiant verily believed and verily believes the statement made by his attorney and that in reliance upon said statement affiant did not request that said action or any issue therein be tried by a jury, and that had affiant believed that the plaintiff would seek to recover a money penalty or a money [82] forfeiture in said action by way of punishment of this defendant, that affiant would have requested the issue of punishment to be submitted to a jury in said cause.

BRIAN CONNOLLY

Affiant

Subscribed and sworn to before me this 6th day of January, 1944.

(Seal) S. J. RIGNEY

Notary Public for the State of Montana, residing at Cut Bank, Montana. My commission expires 2/6/45. [83]

[Title of District Court and Cause]

AFFIDAVIT OF MAILING

United States of America

State of Montana

County of Cascade—ss.

E. J. McCabe, being duly sworn upon his oath deposes and says:

That he is the attorney for defendant Brian Connolly in the above entitled action and that he resides and maintains his office at Great Falls, Cascade County, Montana, and that John B. Tansil, Esq., U. S. District Attorney for the District of Montana, is the attorney for the plaintiff in said cause and resides and maintains his office at Billings, Montana;

That on the 10th day of January, 1944, affiant deposited a true and correct copy of the annexed Affidavit of Brian Connolly in a securely sealed envelope, addressed to "John B. Tansil, Esq., U. S. District Attorney for the District of Montana, Billings, Montana," with postage thereon fully prepaid and deposited said envelope so addressed in the United States Post Office at Great Falls, Montana, on the 10th day of January, 1944, for transmission and [84] delivery in regular course of mail to the said John B. Tansil, Esq., attorney for plaintiff.

E. J. McCABE

Subscribed and sworn to before me on this 10th day of January, 1944.

(Seal) G. C. RYAN

Notary Public for the State of Montana, Residing at Great Falls, Montana. My commission expires July 25, 1945.

[Endorsed]: Filed January 10, 1944. [85]

Thereafter, on January 10, 1944, a Writ of Injunction was duly filed herein, in the words and figures following, to-wit: [86]

[Title of District Court and Cause]

WRIT OF INJUNCTION

The President of the United States of America
To Brian Connolly, and Daniel Connolly, and
all others acting in aid of or assistance of them,
or of either of them and all those in active
concert of participating with them, or either
of them, Greeting:

Pursuant to a judgment of the above-entitled court, in the above-named cause and matter, this day made and filed:

I, Therefore, in consideration thereof and of the particular matter in said judgment set forth, do strictly command you, the said defendants, Brian Connolly and Daniel Connolly, one and both, and all of your agents, servants, employees, attorneys, and lessees, and all others acting in aid of or assistance of them, or either of them, and all those in active

concert or participating with them, or either of them, do absolutely refrain and desist from driving, drifting, allowing to drift, herd, or conveying any livestock whatsoever, on or upon, or permitting the same to be driven, drifted, allowed to drift, herded or conveyed, or pastured, or grazed, or fed on the lands and premises hereinafter described, or otherwise interfering with the possession, use, or enjoyment by the plain- [87] tiff and its Indian wards of any of said lands and premises, or any part thereof, which said lands and premises are more particularly described as follows, to-wit:

Sections 23, 24, 25, 26, 27, 34 and 35, in Township 35 North, Range 10 West, Montana Principal Meridian; Section 10, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 11 and 14, Township 35 North, Range 9 West, Montana Principal Meridian; Sections 20 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; Southwest Quarter of the Northeast Quarter of Section 22, Township 34 North, Range 9 West, Montana Principal Meridian; Sections 16 and 21, Township 35 North, Range 9 West, Montana Principal Meridian; North Half of Section 11, Township 35 North, Range 9 West, Montana Principal Meridian; and South Half Section 11, Township 35 North, Range 9 West, Montana Principal Meridian;

Witness the Honorable Charles N. Pray, Judge of the District Court of the United States, in and

for the District of Montana, this 24th day of December, 1943, and in the one hundred and sixty-eighth year of the Independence of the United States of America.

Attest:

C. R. GARLOW

Clerk of the District Court of the United States
in and for the District of Montana.

(Seal) By C. G. KEGEL

Deputy Clerk. [88]

RETURN OF MARSHAL

United States of America

District of Montana

Office of United States Marshal—ss.

I, E. Lieberg, the duly appointed, qualified and acting United States Marshal, in and for the District of Montana, do hereby certify and return:

That I received the annexed and foregoing writ of injunction at Great Falls, Montana, on the 30th day of December, 1943, and personally served the same, together with a copy of the judgment granting and directing the issuance thereof, in said action, on the defendants, Brian Connolly and Daniel Connolly, by delivering to and leaving with each of said defendants personally on the 3rd day of January, 1944, in the County of Glacier, in the State and District of Montana. a copy of said writ of injunction, together with a copy of the

judgment granting and directing the issuance thereof.

Dated this 4th day of January, 1944.

E. LIEBERG

United States Marshal

In and for the District of
Montana.

By BERNARD J. REILLY

Deputy Marshal

Marshal's Fees and Expenses

For service of writ:

On Biran Connolly\$ 2.00

On Daniel Connolly 2.00

Expenses of service 10.35

Total\$14.35

[Endorsed]: Filed Jan. 10, 1944. [89]

Thereafter, on June 13, 1944, an Order Denying Motions for a New Trial was duly filed and entered herein, in the words and figures following, to-wit:

[90]

In the District Court of the United States in and
for the District of Montana.

No. 305.

[Title of Cause]

Motion for a new trial in the above entitled cause came on regularly for hearing on briefs submitted by counsel for the respective parties, which the court has considered.

Practically every question raised by the Motion for New Trial has already been discussed by counsel and decided by the court. Upon reconsideration of these questions as presented by the briefs, in the court's opinion a sufficient showing calling for a different decision, has not been made; consequently the motion for a new trial will have to be denied, and such is the order of the court herein.

CHARLES N. PRAY

Judge.

[Endorsed]: Filed June 13, 1944. [91]

Thereafter, on September 9, 1944, a Notice of Appeal was duly filed herein, in the words and figures following, to-wit: [92]

[Titled of District Court and Cause]

NOTICE OF APPEAL

To the Plaintiff, United States of America, and
to John B. Tansil, Esq., United States Attorney
for the District of Montana, Attorney for
Plaintiff:

You, and each of you, will please hereby take notice that Brian Connolly, who is also known as Biran Connolly, and Daniel Connolly, the defendants in the above entitled action, do hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final Judgment given, made and entered in this action on the 24th day of December, 1943.

Dated this 9th day of September, 1944.

Signed:

E. J. McCABE

S. J. RIGNEY

Attorneys for Defendants and
Appellants Brian Connolly
and Daniel Connolly.

Address: Suite I, Odd Fellows Building, Great
Falls, Montana.

[Endorsed]: Filed Sept. 9, 1944. [93]

Thereafter, on September 11, 1944, a Bond on
Appeal was duly filed herein, in the words and
figures following, to-wit: [94]

[Title of District Court and Cause]

BOND ON APPEAL

Know All Men By These Presents, That we, the
undersigned, Brian Connolly (also known as Biran
Connolly) and Daniel Connolly, as Principals, and
Ida Johnson Connolly and Jack Loring of
 , Glacier County, Montana, as Sure-
ties, are held and firmly bound unto the United
States of America, the Plaintiff above named, in
the full sum of Two Hundred Fifty (\$250.00)
Dollars to be paid to the said Plaintiff, successors
or assigns, to which payment well and truly to be
made, we bind ourselves, our successors and assigns,
jointly and severally by these presents.

Sealed with our seals and dated this 10th day of September, 1944.

The condition of this obligation is such that whereas, in the District Court of the United States, in and for the District of Montana, in the above entitled action, pending in said Court, wherein United States of America is Plaintiff and Brian Connolly (also known as Biran Connolly) and Daniel Connolly are Defendants, a judgment was rendered and entered against the said Defendants in the amount of Two Hundred Fifty Eight (\$258.00) Dollars by way of penalty provided by Section 179, Title 25, U. S. Code, and the further sum of One (\$1.00) Dollar, nominal damages, and for a permanent injunction against said Defendants [95] one and both, and their agents, servants, employees, attorneys and lessees, and all others acting in aid of or assistance of them, or of either of them, and all those in active concert or participating with them, or either of them, forever restraining and absolutely enjoining said Defendants and the other persons aforesaid, or either or any of them, doing or allowing to be done certain acts or things particularly described in said judgment, reference to which judgment is hereby made for further particulars, and adjudging recovery of costs of Plaintiff in said action; and

Whereas, the Defendants Brian Connolly (also known as Biran Connolly) and Daniel Connolly have filed in said action their Notice of Appeal from said judgment to the Circuit Court of Appeals of the United States for the Ninth Circuit, and said

Defendants propose to prosecute said appeal to reverse said judgment;

Now, Therefore, In consideration of said appeal if the above named Brian Connolly (also known as Biran Connolly) and Daniel Connolly, as such Defendants, shall pay all costs if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation shall be void, otherwise to remain in full force and effect.

BIRAN

[Seal]

BRIAN CONNOLLY

[Seal]

DANIEL CONNOLLY

Principals.

[Seal]

IDA JOHNSON CONNOLLY

[Seal]

JACK LORING

Sureties.

State of Montana,
County of Glacier—ss.

Ida Johnson Connolly and Jack Loring, residents of Glacier County, Montana, being first duly severally sworn upon oath, each for himself, deposes and says: [96]

That he is a resident and freeholder within Glacier County, Montana, and that he is worth the amount of money specified in the foregoing Bond as the penalty thereof to-wit: Two Hundred Fifty (\$250.00) Dollars over and above all of his just debts and liabilities and property exempt from execution.

IDA JOHNSON CONNOLLY

JACK LORING

Subscribed and sworn to before me this 10th day of September, 1944.

S. J. RIGNEY

Notary Public for the State of Montana. Residing at Cut Bank, Montana.

My commission expires February 6, 1945.

State of Montana,

County of Glacier—ss.

I, do hereby certify and declare as follows, to-wit:

That I am the duly elected, qualified and acting Assessor of Glacier County, Montana, and that Ida Johnson Connolly and Jack Loring the Sureties names in the within and foregoing Bond on Appeal, appear as owners of real estate and personal property upon the assessment and tax records of Glacier County, Montana, in value as follows:

Ida Johnson Connolly the sum of Eleven Hundred Twenty Dollars; Jack Loring the sum of Thirty Eight & 35 Dollars.

In Witness Whereof, I hereunto subscribe my name as Assessor aforesaid on this 10th day of September, 1944.

EDWARD MURPHY

Assessor of Glacier County,
Montana.

[Endorsed]: Filed Sept. 11, 1944. [97]

Thereupon on September 9, 1944, a copy of Notice of Appeal was mailed to the United States Attorney, Billings, Montana, and on September 11, 1944, a copy of the Bond on Appeal was mailed to the United States Attorney, Billings, Montana, the Clerk's docket entry of such mailing being as follows, to-wit: [98]

[Title of Cause.]

FILINGS—PROCEEDINGS.

Sept. 9, 1944. Filed Notice of Appeal by defendants, and mailed copy of same to United States Attorney, Billings, Montana.

Sept. 11, 1944. Filed Bond on Appeal.

Sept. 11, 1944. Mailed copy bond on appeal to United States Attorney, Billings, Montana. [99]

Thereafter, on September 20, 1944, a Transcript of Evidence was duly filed herein, in the words and figures following, to-wit: [100]

In the District Court of the United States,
District of Montana.
Great Falls Division

Case No. 305

UNITED STATES OF AMERICA,
Plaintiff,

vs.

BRIAN CONNOLLY, et al.,
Defendants,

Appearances:

For Plaintiff,
ROY F. ALLAN, Esquire.

For Defendants,
E. J. McCABE, Esquire.

TRANSCRIPT OF TESTIMONY

Be It Remembered That this matter came on regularly for hearing at Great Falls, Montana, on Thursday, May 6, 1943, at ten o'clock A.M., before the Honorable C. N. Pray, Judge Presiding, sitting without a jury.

Whereupon the following proceedings were had and done. [105]

The Court: Case No. 305, the case of the United States versus Brian Connolly and others. Are you ready for the Government?

Mr. Allan: Yes, your Honor.

The Court: Are you ready for the defendants?

Mr. McCabe: Yes.

The Court: Will you make a brief statement of the case?

Mr. Allan: This action is one which the Government is suing Brian Connolly and Daniel Connolly, his son, who are two Indian Wards of the Blackfeet Tribe, for trespass on the Blackfeet Indian Reservation. The allegations of the complaint set forth the formal allegations as to the Court's jurisdiction, the boundaries of the Blackfeet Indian Reservation, the lands upon which Mr. Connolly has a right to graze, and the lands upon which he is in definite trespass.

The complaint likewise sets forth that his trespass is a wilful trespass and in violation of Sec. 179, Title 25, United States Codes.

The complaint originally asked for a temporary restraining order which was granted by the Court ex parte, then a hearing was had for an injunction pendente lite which was likewise granted by the Court.

The case today is for the permanent injunction, and likewise for damages for the trespass.

In answer to the complaint the defendants admit most of the allegations of the complaint, with the exception of pertinent parts, such as wilful trespass, and in his answer sets forth certain rights [106] that he has to trespass, to go upon the land; not admitting a trespass by reason of his Indian relationship. These matters, if the Court will recall, were all considered by the Court on briefs and motions.

The Court has decided that the Indian has no right on such land by reason of his Indian relationship.

I think that condenses the whole matter, your Honor.

Mr. McCabe: The injunction feature is based upon intent, and throughout, if I construe the complaint correctly, I disagree with the counsel. The charge in a nutshell here is that the defendants willfully trespassed upon the land.

GOVERNMENT'S CASE

Whereupon

ALBERT E. STEPHENSON,

a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination

By Mr. Allan:

Q. Will you please state your name?

A. Albert E. Stephenson.

Q. And what is your business or your occupation?

A. Forest Supervisor on the Blackfeet Indian Reservation.

Q. When you say Forest Supervisor, just briefly state what are your duties as such?

A. Administrator in charge of the Forestry, and the grazing activities on the Reservation.

Q. That is on the Blackfeet Indian Reservation?

A. Yes, sir. [107]

(Testimony of Albert E. Stephenson.)

Q. How long have you been engaged in that capacity?

A. I have been on the Blackfeet Reservation since August, 1941.

Q. Now, as the man in charge of Forestry and Grazing on the Blackfeet Indian Reservation, do you have under your care and custody the records of the Blackfeet Indian Reservation, as to your particular type of work? A. Yes.

Q. Including permits to graze, and matters of that type? A. Yes.

Q. Directing your attention to plaintiff's exhibit one, I will ask you to briefly identify that, please?

A. That is a grazing permit issued to Mr. Connolly for what is known as Range Unit No. 12, and covers the permit period of November 1, 1940, to April 30, 1943.

Q. Directing your attention specifically to this grazing permit, does it cover the brand of his cattle and horses, is that shown in there?

A. His brand for cattle and horses are not shown on this permit.

Q. Do you have a permit that it is shown on there? A. No.

Q. When you made reference to Unit No. 12, is that correct? A. Yes.

Q. Will you just step over here to this map, and show us where that is, please?

(Witness complies.) [108]

Q. Mr. Stephenson, what is this map? Will you please explain it to us?

(Testimony of Albert E. Stephenson.)

A. This map is a Range Unit map of the Blackfeet Indian Reservation, showing all the various Range Units. The numbers inside the black lines area indicate the Unit numbers, and the black line represents the Unit line, or Unit Boundaries.

Q. And what is the basis of this map itself? What type of map is it?

A. That is the official map of the Blackfeet Indian Reservation.

Q. Prepared by Engineers of the United States Government for use on the Blackfeet Indian Reservation? A. Yes.

Mr. McCabe: We will admit that it is.

Mr. Allan: All right. The Government offers Exhibit number one in evidence, which is the lease.

Mr. McCabe: No objections.

Whereupon Plaintiff's Exhibit number one was received in evidence, and is in words and figures as follows, to-wit:

PLAINTIFF'S EXHIBIT No. 1

Agency Office 1-5-Ind-8086
Statement and Certificate
of Award

Date May 7, 1940

Interior	Indian Browning, Montana
(Department or establishment)	(Buruea) or office (Location)

Method of or Absence of Advertising. (Section 3709 of the Revised Statutes) [109]

1. After advertising in newspapers.

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

2. (a) After advertising by circular letters sent to.....dealers.

(b) And by notices posted in public places (If notices were not posted in addition to advertising by circular letters sent to dealers, explanation of such omission must be made. The notation on the certificate below must be "2 (a) (b)" or "2 (a)," Depending on whether or not notices were posted.)

2. Without advertising, under an exigency of the service which existed prior to the order and would not admit of the delay incident to advertising.

4. Without advertising in accordance with..... See below.....

5. Without advertising, it being impracticable to secure competition because of.....

(Here state circumstances under which the securing of competition was impracticable)

Award of Contract.

A. To lowest bidder as to price (Expenditures).

B. To other than the lowest bidder as to price (Expenditures.)

C. To highest bidder as to price (Receipts).

D. To other than the highest bidder as to price (Receipts).

Certificate

I Certify that the foregoing statement is true and correct; that the agreement was made in consequence of No. 4 of the method of or absence of advertising and in accordance with award of contract lettered D, as shown above; that where lower

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

bids (expenditure contracts) or higher bids (receipt contracts) as to price were received a statement of reasons for their rejection, [110] together with an abstract of bids received, including all lower than that accepted in case of expenditure contracts and all higher in case of receipt contracts, is given below or on the reverse hereof or on a separate sheet attached hereto; that the articles or services covered by the agreement (expenditure) are necessary for the public service, and that the prices charged are just and reasonable.

Unit was allocated to Indians without advertising in accordance with Sec. 9 of the General Grazing regulations and Blackfeet Council Resolution No. 35.

Permit begins November 1, 1940 instead of May 1, 1940 in order to allow permittee some extra time in which to comply with the bond requirements since this could not be done to complete permit by May 1. The period not included has been treated as trespass.

U. S. INDIAN SERVICE

Forestry & Grazing

Received June 11, 1940. Regional Office, Billings, Montana.

.....

(Signature of contracting officer)

Superintendent

(Title)

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

United States

Department of the Interior

Office of Indian Affairs

Unit No. 12

Permit Fee: \$5.00

Contract No. 1-5-Ind-8086

Grazing Permit

On and Off

(Write all names in full) [111]

Blackfeet Indian Agency Browning, Montana.

By authority of law and under regulations prescribed by the Secretary of the Interior, Brian Connolly & Fred Chouquette, of Browning, Montana is hereby granted permission to hold and graze livestock on the Blackfeet Indian Reservation for a period beginning November 1, 1940, and terminating not later than April 30, 1943, on the range unit usually known or described as follows: Range Unit No. 12, containing 3680.00 acres allotted, and included under on-7-off clause are 1200.00 acres owned allotted, 880.00 acres private land, including all unfenced Indian allotments on which authority to grant grazing privileges have been secured, and covering livestock in kind and numbers, for the grazing period, and at the rate per head as shown in the following scheduly, subject to the payment of all fees and full compliance with the attached range control stipulations which are made a part of this permit: [112]

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

Year	Number of Head	Kind of Stock	Grazing Period From—	To—	Rate per Head	Amount	Payable One-half	One-half
1940	153	Cattle	11/1/40	4/30/41	1.80	\$276.00	.....	8/1/40
1941	153	Cattle	5/1/41	4/30/42	3.60	552.00	2/1/41	8/1/41
1942	153	Cattle	5/1/42	4/30/43	3.60	552.00	2/1/42	8/1/42

Unless authorized by Superintendent Blackfeet Agency in writing, only livestock bearing the brands and marks herein shown shall be grazed under authority of this permit:

Cattle Branded	Ear Marks	Horse Brands	Sheep Branded	Ear Mark
R	L	R	Wool Brand	R
				L

[113]

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

This permit is issued with the understanding that 240 head of cattle will be grazed on this range, (64% allotted, 21% owned allotted) 85 percent of which is Indian land and 15 percent privately owned or leased range, evidence of the right to the use of which is recorded with Supt. Blackfeet Agency.

It is further understood and agreed that if the permittee allows a greater number of livestock than the total number herein stipulated to graze upon this range unit of which the Indian range is a part, during the period this permit is in effect, this on-and-off clause shall immediately become null and void and the stock in excess of the number upon which fees are paid to the Indians shall be considered as in a state of trespass and treated accordingly. (Delete the above paragraph if not applicable.)

In consideration of the above privileges, the permittee agrees to pay to Superintendent Blackfeet Agency for the use and benefit of the Indians entitled to occupy the lands above described, the sum of money found to be due from the permittee according to the provisions of this permit (calves, colts, and lambs under 6 months of age not to be counted), and they further agree to pay the grazing fees annually or semi-annually in advance. Unless the grazing fees shall be paid in advance for the full term of the permit, these payments will be guaranteed by an acceptable corporate surety bond

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

in a penal sum of not less than the total amount due in any 1 year under the terms of the permit, namely, Five hundred fifty-two and no/100 dollars, [114] \$552.00) (with a maximum limit of \$35,000), or by a bond for the same amount with at least four individual sureties who shall each qualify in an amount equal to twice the amount of the bond, or by depositing a cash bond with.....equal to one-half of the annual grazing fees; said cash deposit to be credited on the last installment due on the permit, provided the terms of the permit have been faithfully carried out by the permittee.

It is understood and agreed by the permittee that this instrument is not a lease and is not to be taken or construed as granting any leasehold interest in or to the land described herein, but that it is a permit terminable and revocable in the discretion of Approving Officers and in any event not to extend beyond April 30, 1943.

It is also understood and agreed that any part of the area covered by this permit may be excluded from this range unit by Approving Officers in the exercise of their discretion, by the transfer of title through sale allotted land, or by the extinguishment of the Indian right of occupancy of the lands; and thereupon this permit shall cease and determine as to the parts of the range unit thus eliminated, the number of stock stipulated shall be reduced in conformity thereto, and the payments due here-

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

under shall be adjusted accordingly, provided that the termination of the permit has not been due to the fault of the permittee or to a violation of the terms of this permit by or on behalf of the permittee.

The permittee hereby agrees that he and his employees [115] will not use any part of the range unit for the sale, manufacture, storage, or drinking of intoxicants or the handling of narcotics, and neither he nor his employees will take part in immorality or any illegal practices whatever in or upon the reservation. Violation of this clause will be deemed sufficient ground for cancelation of the permit.

All livestock grazed under this permit and all other property used in connection with the permit shall be held as security for the payment of any grazing fees due and for the full performance of the agreement, and all payments due hereunder shall constitute a prior and first lien upon said livestock and other property incidental to the enjoyment of the privileges granted. The Agency office contains public records of the United States pertaining to trust Indian allotments and all persons are charged with notice and knowledge thereof. A copy of each permit must be filed promptly in the Agency office. Such copy shall be available at all times for public inspection. If the permittee so

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

desires he may file or record a copy of the permit, at his own expense, in the proper county office.

This permit shall not be assigned, sublet, or transferred without the written consent of the sureties and Approving Officers.

The Superintendent and the Regional Forester shall make decisions relative to the interpretation of the terms of the permit and the range control stipulations which are attached hereto, and the terms of the permit cannot be varied in any detail except as herein provided [116] without the written approval of the surety, the permittee, and the issuing officers.

Done at the Blackfeet Indian Agency, this 7 day of May, 1940.

(Seal)

C. L. GRAVES

C. L. Graves, Superintendent

(Issuing Officers)

Concurred in June 11, 1940.

DONALD F. FIELD

Acting Regional Forester.

I accept the permit with the foregoing conditions and the attached range control stipulations.

BRIAN CONNOLLY

FRED CHOUQUETTE

Permittee

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

To Be Executed in Quintuplicate Grazing
4376511

Department of the Interior

Office of Indian Affairs

Bond for Corporate Surety

Know All Men By These Presents, That we, Brian Connolly & Fred Chouquette of Browning, State of Montana, and....., of....., State of, partners doing business under the firm name of....., having an office and principal place of business at Browning, in the State of Montana, as principal, and Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of the State of Maryland, having its principal office at Baltimore, as surety, are held and firmly bound unto the United States of America in the penal sum of Five Hundred fifty-two [117] and no/100 dollars (\$552.00), lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, each of us, and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 27th day of May, 1940.

The Condition of This Obligation is Such, that whereas the above-bounden Brian Connolly and Fred Chouquette, as principals, have accepted a permit dated May 7, 1940, for the use of tribal land

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

and/or allotted Indian land of the Blackfeet Indian Reservation of the State of Montana, for grazing purposes, said land being known as Range Unit No. 12 of the said reservation and comprising approximately 3680.00 allotted and 1200.00 acres owned allotted, the identification of which herein by legal subdivision is expressly waived by both the principal and surety hereto.

Now, Therefore, if the above-bounden Brian Connolly & Fred Chouquette, as principals, their heirs, executors, administrators, successors, and assigns, shall faithfully carry out and observe all the obligations assumed in the acceptance of said permit, affecting the interest of the said Blackfeet tribe of Indians and of the individual Indians owning allotments within the area covered by said permit and shall observe all the laws of the United States and regulations made or which shall be made thereunder for the government of trade and intercourse with Indian tribes, and all regulations that have been or shall hereafter be lawfully prescribed [118] by the Secretary of the Interior relative to grazing permits executed by or in behalf of the said Blackfeet tribe or for Indian allottees thereof and shall in all particulars comply with the provisions of said permit and said regulations, then this obligation shall be null and void; otherwise to remain in full force and effect; and it is expressly agreed that failure of the principal herein to make any installment payment when due under the terms of this permit shall

(Testimony of Albert E. Stephenson)

Plaintiff's Exhibit No. 1—(Continued)

at once make both the principal and the surety on this bond liable for the full amount of such payment.

In Witness Whereof, we hereunto set our hands and seals this the 27th day of May, 1940.

(Seal)

BRIAN CONNOLLY

FRED CHOUQUETTE

Blockfoot, Mont.

.....

Corporate principal signature

Attest:

.....

Secretary

By FIDELITY AND DEPOSIT
COMPANY OF MARYLAND
A. B. KALIN

Atty-in-fact

(Corporate Seal of Surety)

Witnesses:

LORAIN HALSETH

Browning, Mont.

MARCELLA WELLMAN

Browning, Montana

Department of the Interior. Office of Indian Affairs. June 8, 1940.

Approved:

C. L. GRAVES

Superintendent. [119]

In all cases where an officer signs for a corporation, either as principal or surety, there must be

(Testimony of Albert E. Stephenson)

Plaintiff's Exhibit No. 1—(Continued)

attached to the bond either an original certification, signed by the board of directors, of the authority of the signing officer, or officers, to sign for and in behalf of the corporation; or a copy of a resolution of the board of directors granting a general authority of this character to the signing officer or officers, certified by the president and secretary of the corporation, under the corporate seal, as a true and accurate transcript of the resolution.

On and Off

Consideration for Owned Allotted Land
for Indians

I, the undersigned Brian Connolly, allottee on the Blackfeet Indian Reservation, hereby certify that I have absolute control of the following described land located within the boundary of Grazing Unit No. 12, and that this land will be used for grazing purposes and for the production of feed for stock held under permit and grazed on land included in Grazing Unit No. 12, as described in the schedule of Indian Land attached to this Grazing Permit issued by the Department of the Interior, Office of Indian Affairs. It is understood and agreed that this certificate is to be attached to and become a part of the Grazing Permit on the above Grazing Unit. [120]

(Testimony of Albert E. Stephenson)

Plaintiff's Exhibit No. 1—(Continued)

LAND DESCRIPTION

2832 Daniel B. Connolly, SE/4, Sec. 23; NW/4 W/2 NE/4, Sec. 26; T. 35 N., R. 9 W.....	400.00
2831 Merle Connolly, S/2, E/2 NE/4, Sec. 26; T. 35 N., R. 9 W.	400.00
2833 Nora Connolly, E/2, E/2 NW/4, Sec. 35; T. 35 N., R. 9 W.	400.00
	<hr/> 1200.00

BRIAN CONNOLLY

Permittee

Subscribed and sworn to before me this.....day
of June 3, 1940.

C. L. GRAVES

Superintendent

The estimated carrying capacity for the above
described land is 50 head of cattle annually.

Approved

C. L. GRAVES

Superintendent

On-and-Off Certificate of Right
To Use Deeded or Leased Land

I, the undersigned Brian Connolly, hereby certify that I have absolute control of the following described land located within the boundary of Grazing Unit No. 12, and that this land will be used for grazing purposes and for the production of feed for livestock held under permit as described in the Scheduly of Indian Land attached to this Grazing

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

Permit issued by the Department of the Interior, Office of Indian Affairs. It is understood and agreed that this certificate is to be attached to and become a part of the Grazing Permit on [121] above Trazing Unit.

LAND DESCRIPTION

SW/4, W/2 W/2 SE/4 Sec. 25	200 acres
E/2 E/2 NE/4, Sec. 34; W/2 NW/4, SW/4 Sec. 35....	280 acres
<hr/>	
all in Twp. 35 N. R. 9 W. Total.....	480 acres
SE/4 NE/4, NE/4 SE/4, Sec. 28.....	80
N/2 Sec. 25	320
<hr/>	
	880

BRIAN CONNOLLY

Permittee

Subscribed and sworn to before me this 3rd day of June, 1940.

(Notarial Seal) H. B. PERKINS

Notary Public for the State of Montana. Residing at Browning, Montana.

My commission expires October 25, 1940.

The estimated carrying capacity for the above described land is 37 head of cattle annually.

Approved:

C. L. GRAVES

Superintendent

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

Legend

Range Unit Maps

Permittee Brian Connolly & Fred Choquette

Range Unit No. 12

Permit Period.....

<input type="checkbox"/>	Trust allotments on which authority to grant grazing Privileges have been obtained.....	3680.00 acres	
<input checked="" type="checkbox"/>	Trust Allotments owned by family using range unit	1200.00 acres	
<input checked="" type="checkbox"/>	Trust allotments in heirship status where more than 1/10 undivided interest is owned by family using range and included in "on and off" clause .....	..... acres	
<input checked="" type="checkbox"/>	Patent in fee or deeded land included in "on and off" clause	880	
			[122]
<input checked="" type="checkbox"/>	Trust allotments on which authority has not been obtained and not included in permit.....	..... acres	
<input checked="" type="checkbox"/>	Patent in fee or deeded land not included in "on and off" clause.	_____	
	Total.....	5760 acres	
			[123]

~~TOOLE COUNTY ABSTRACT COMPANY~~

As to the correctness of your title is provided with an ABSTRACT. Millions of dollars are invested on the evidence of the abstract, as to the legality of title giving safety to the investment.

1/1/21

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

Legend

Range Unit Maps

Permittee Brian Connolly & Fred Choquette

Range Unit No. 12

Permit Period.....

<input type="checkbox"/>	Trust allotments on which authority to grant grazing Privileges have been obtained.....	3680.00 acres	
<input type="checkbox"/>	Trust Allotments owned by family using range unit	1200.00 acres	
<input type="checkbox"/>	Trust allotments in heirship status where more than 1/10 undivided interest is owned by family using range and included in "on and off" clause .....	..... acres	
<input type="checkbox"/>	Patent in fee or deeded land included in "on and off" clause	880	[122]
<input type="checkbox"/>	Trust allotments on which authority has not been obtained and not included in permit.....	..... acres	
<input type="checkbox"/>	Patent in fee or deeded land not included in "on and off" clause.	_____	
	Total.....	5760 acres	[123]

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

No.	Allottee	Description	S	T	R	Acreage	Amount
2928	George Ground	W/2	23	35	9	320.00	48.00
2742	Emma C. Blood	N/2 NE/4	23	"	"	80.00	12.00
2743	Mollie Blood	S/ NE/4	23	"	"	80.00	12.00
2835	Jean Connolly	W/2	24	"	"	320.00	48.00
2766	Mike Bullechild	N/2	27	"	"	320.00	48.00
1120	Margaret Schultz	N/2 SE/4	27	"	"	80.00	12.00
289	Handingback Spottedeagle	E/2 SE/4 SE/4	27	"	"	20.00	3.00
400	Jack Comesatnight	SW/4, SW/4 SE/4, W/2 SE/4 SE/4	27	"	"		
		NW/4 NE/4, W/2 NE/4 NE/4	34	"	"	280.00	42.00
3082	Frank Madplume	NW/4, N/2 NE/4, SW/4 NE/4	28	"	"	280.00	42.00
3083	Victor Madplume	SW/4, S/2 SE/4, NW/4 NE/4,	28	"	"		
		NW/4 NW/4	33	"	"	320.00	48.00
3079	Raymond Madplume	S/2 NW/4, SW/4, W/2 SE/4, W/2					
		E/2 SE/4	33	"	"	360.00	54.00
3077	Annie Madplume	NE/4 NW/4, NE/4 Sec. 33, NW/4	34	"	"	360.00	54.00
289	Holdingback Spottedeagle	SW/4 NE/4, W/2 SE/4 NE/4	34	"	"	60.00	9.00
3078	Victoria Madplume	E/2 E/2 SE/4 Sec. 33, S/2	34	"	"	360.00	54.00
3084	Josephine Madplume	W/2	36	"	"	320.00	48.00
2794	John Calfrobe	SE/4 SE/4	25	35	9	40.00	6.00
2795	Margaret Calfrobe	E/2 W/2 SE/4	25	35	9	40.00	6.00
2796	Snick Calfrobe	NE/4 SE/4	25	35	9	40.00	6.00

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

United States

Department of the Interior

Office of Indian Affairs

Range Control Stipulations

1. Grazing Permits.

Grazing permits on Indian reservations are issued subject to certain restrictions and regulations, and with the distinct understanding that the ranges will be reduced both in size and carrying capacity whenever the Commissioner of Indian Affairs shall consider such action essential to the protection of the interests of the Indians. Grazing permits cover Indian lands only, inclusive of unallotted land not otherwise disposed of and all unfenced allotments on which powers of attorney have been executed to the superintendent authorizing him to act for the allottees. Permits must be executed within thirty days after the receipt of notification of an award.

2. Payment of Grazing Fees.

Grazing fees shall be paid annually or semiannually in advance, as specified in the permit. No charge will be made for animals under six months of age at the time of entering the reservation, which are the natural increase of the stock upon which fees are paid. Payment will be made for calves, colts, and lambs over six months old for the time grazed on the reservation after that age is reached at the same rate as for full grown stock.

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

3. Excess or Deficit of the Number of Stock Specified.

Unless the number of livestock specified in the permit is reduced by the Commissioner of Indian Affairs, [125] the permittee will not be allowed credit or rebate in case the full number is not grazed on the area. However, if the number authorized is exceeded, without previous authority, the permittee will be required to pay in addition to the regular charges as provided in the permit, a penalty equal to 50 per cent thereof for such excess stock and the stock will be held until full settlement has been made.

4. Crossing Permits.

Livestock shall not be driven upon or across any reservation without first securing a standard form crossing permit No. 5-929 properly signed by an authorized official of the Indian Service. This permit will state the number of head, dates of travel, class of stock, trail to be used, and destination. Such stock must be moved not less than 5 miles in case of sheep and 10 miles in case of cattle each day, and stock shall not remain more than 12 hours at any bed ground or camping place. In case of unnecessary delay, or willful trespass, the superintendent or his authorized agent shall assess and collect such damages as may seem reasonable. Owners of stock will anticipate their time of entry and secure a permit well in advance of the date when

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

the stock will enter upon the reservation. All stock will be refused entry upon the reservation until a permit to enter has been issued. The agency office and the officer in charge must be notified at least 5 days in advance in order that arrangements may be made for an official to meet the stock. Stock owners who introduce their stock upon the reservation without proper authority will be considered [126] as trespassers and their stock will be removed from the reservation and denied the right to return. The right is hereby reserved to issue crossing permits over all ranges, regardless of whether or not special driveways have been established thereover, and provided that the movement of stock so authorized shall be effected under the supervision of the superintendent or his agent. A permittee will not authorize another permittee to drive stock across his range.

5. Quarantine Regulations.

All stock covered by permit is subject to the quarantine laws and regulations now in force or hereafter to be promulgated by the United States and the State in which the reservations are situated.

6. Law and Order.

All regulations relative to the maintenance of law and order on Indian reservations and those forbidding the introduction of intoxicating liquors will be complied with by the permittee and his employees.

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

7. Entering the Range.

The earliest date upon which stock will be permitted to enter the range will be the date shown in the permit. Notice must be given to the superintendent prior to entering the reservation. On reservations where permanent driveways have been established all livestock will be required to enter or leave the reservation on the particular driveway designated by the superintendent. On reservations where driveways have not been established and roads and trails are used for the movement of livestock, the route to be followed will be the most practicable one available [127] and will be designated by the superintendent.

8. Counting of Livestock.

All livestock grazing upon or crossing Indian reservations must be counted by an authorized officer of the Indian Service. Arrangements should be made for counting all livestock before it enters the reservation. Permittees are required to notify the superintendent a sufficient length of time in advance to permit him to have a representative present when stock are counted on or off the reservation. The right is reserved by the Indian Service to have a representative present at each round-up to check the number of stock, and in the event that the permittee shall fail or refuse to round-up his stock at proper times and in a satisfactory manner for the purpose of allowing a count of the stock,

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

the superintendent shall have the right to round-up and count said stock at the expense of the permittee.

9. Branding of Stock.

All livestock grazed under permit on Indian reservations or livestock which is authorized to cross said reservations under formal crossing permit must be branded so as to be identified. The brands of all livestock grazed upon the reservation under permit must be recorded in the office of the superintendent with the owner's name.

10. Affidavit of Permittee.

If grazing permits are issued for a period exceeding one year, the permittee will be required to execute (or have executed by a competent foreman) an affidavit showing the number of livestock grazed under [128] authority of such permit and on hand at the close of June of each year, and, in case of occupancy of the area during the previous winter, the number carried over, if any; and another affidavit at the close of December of each year showing the livestock then on hand and the number carried during the summer of that year, or such period as may be required by the Commissioner of Indian Affairs. Affidavits should be made on standard form 5-370.

11. Camp Record.

A camp record showing the number of each camp, approximate number of days of feed avail-

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

able, dates used and losses from predatory animals, etc., will be required in connection with all sheep grazing permits. Reports should be made by the permittee at the close of each grazing season on standard form 5-518. A record should also be made of all predatory animals killed on the range unit by the permittee and his employees and a report made to the superintendent. In States where bears are protected by law only such bears may be killed as are actually killing or attempting to kill livestock.

12. Camp Fires.

Camp fires must not be built against logs, stumps, or trees. The ground around the fire must be cleared of all inflammable material to at least a distance of 6 feet on all sides. The fire itself must be built in a hole cut at least 10 inches into the mineral earth. The camp fire must be completely put out with water or mineral earth whenever the camp is left alone [129] even for a short time. It is suggested that stoves be used in camp whenever possible, in order to decrease the fire hazard. Each camp outfit must include a shovel and an ax, each in good condition.

13. Smudge Fires.

Smudge fires must not be made unless absolutely necessary. They must never be made in places which have not been fully cleared for a distance of 25 feet on all sides. A smudge fire must never

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

be made near the roots of a tree, in or near a stump or snag, and must be close to and in plain sight of camp. Such fires, when not service the purpose for which they are made and when the camp is deserted or moved, must be immediately and completely extinguished with water or by burying with mineral earth.

14. Conduct in Case of Fire.

Whenever a permittee discovers an unauthorized and uncontrolled fire burning, whether started by his own carelessness or in some other way, he should put it out if he can. If it can not be put out or placed under temporary control, it should be reported to the nearest forest or grazing officer as soon as possible. In case of fire all range users are expected to place themselves and their employees at the service of the forest or grazing officer in charge for such work in connection with the fire as the officer may request. The failure of any permittee to cooperate to the fullest extent possible in the control of forest and range fires may result in the immediate cancellation of any permits which he may hold and his removal from the reservation. The [130] unauthorized setting of a fire or carelessness in connection with an authorized fire may result in criminal prosecution under Section 6 of the act of June 25, 1910 (36 Stat. L, 855-857).

15. Trespass.

All permittees must avoid trespassing. In case

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

of trespass the herder and packer may be excluded from the reservation. The owner is liable to prosecution for civil damages. When upon the reservation the herder, packer, and camp mover must understand that should the instructions of their employer and the forest or grazing officer disagree as to the manner in which the range should be used, they must follow the instructions of the officer. Ordinarily the grazing movements of stock of a permittee within the range assigned him will not be interfered with, but the superintendent reserves the right to direct such movement whenever he deems it necessary for the proper protection and utilization of the range. The following acts constitute trespass:

(a) The grazing upon or the driving of any stock across the reservation without a written permit, or the grazing upon or the driving across any reservation in violation of the terms of a permit.

(b) The grazing of stock upon Indian land within an area closed to grazing of that kind of stock.

(c) The grazing of stock by a permittee or lessee upon an area withdrawn from use for grazing purposes.

(d) Allowing stock to drift and graze upon the reservation without a written permit.

(e) Violation of any of the terms of grazing permit or crossing permit. [131]

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

(f) Refusal to move stock upon instructions of an authorized officer of the Indian Service when an injury is being done to the range or forest by reason of improper handling of the stock.

16. Damage to Roads, Trails, or Springs.

Any person or persons to whom grazing permits or crossing permits have been issued receive such permits with the understanding that they are obligated to repair all damage to roads or trails caused by the presence of their stock in any part of the reservation. Permittees must build any new roads, trails, or bridges found necessary for the proper handling of their stock. They must also fence any springs or seeps on Indian land which are being damaged by the trampling of their stock, if they shall be order to do so by the superintendent or his duly authorized representative.

17. Damage to Indian Property.

The permittee will exercise due precaution to prevent injury to the premises or livestock of Indians and will be required to return to the vicinity of any Indian's home any livestock belonging to such Indian which may have strayed through the handling of stock under this permit or drifted away with the permittee's herd. The permittee will be required to reimburse the Indians for any damage that may be done to their premises or livestock through the acts of the permittee, his employees, or livestock.

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

18. Bedding Sheep.

The bedding ground must be changed every day unless some natural condition will not allow the change to be made. Where possible the bedding out system will be used. [132] Except where camp wagons are used no bed ground will be occupied for more than two nights, and where camp wagons are being used three nights will be the maximum time allowed. Failure to observe these rules will result in that part of the range being withdrawn from the grazing area and possible removal of the stock from the reservation. The trailing of sheep into and out from a permanent bed ground will not be allowed. Bed grounds where possible will be located at least one-quarter of a mile from a running stream, spring, or other water.

19. Disposition of Carcasses.

The carcasses of all animals which die upon the reservation from contagious or infectious diseases must be burned at once, and the carcasses of all animals which die close to water, trails, or other places where they will be a nuisance must be removed immediately and buried or burned. The same extreme care should be taken when building or putting out a fire for burning a carcass as in case of a fire for any other purpose.

20. Salting of Stock.

When the forest or grazing officers shall require it all stock grazed under permit must be salted

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

regularly at such places and in such manner as may be designated. This rule applies more particularly to cattle but on some ranges may also apply to sheep. The use of troughs is advocated and these should be placed on rocky ground and well removed from water. Under no conditions will salt be placed at or near water. The proper use of salt on all ranges should aid in preventing stock from remaining too long at watering places and thereby permanently damaging [133] the feed. Stock will alternate between salt and water if the two are widely separated and will consume as much range around a salt ground as around a water hole.

21. Handling of Sheep.

The open-herding system of handling sheep should be used on all ranges where applicable. The principal points in this system are:

(a) Herding in the lead of sheep instead of in the rear, and training them to spread out and graze quietly.

(b) Grazing rather than driving when going to and from water.

(c) Bedding down the sheep on fresh bed grounds where night overtakes them, with proper selection of bed grounds so the sheep will be contented.

(d) Camping close to the sheep each night by using a burro or horse to pack the herder's food and bed, or packing the herder's outfit with a saddle horse from a central camp.

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

(e) Using dogs as little as possible after the sheep are properly trained and keeping dogs principally to protect the flock from predatory animals.

(f) Ewes with lambs will invariably graze around the bed ground before leaving. For this reason ewes and lambs should never be camped twice in the same place, if avoidable.

22. Protection of Game, Fish and Birds.

It is expected that herders and other employees will comply with the game laws of the State in which the reservation is located and will assist the forest, grazing, and State officers in the enforcement thereof, and they [134] will be required to comply with all regulations of the Indian Service regarding fish and game.

23. Range Improvements.

It is the policy of the Service to encourage the construction of improvements necessary for the proper management of livestock and the utilization of the range. Proper range improvements will make available much feed which could not otherwise be utilized. However, the cost of such improvements will be borne by the permittee unless otherwise provided for in the permit.

24. Condition of Camping Ground.

Camp grounds must be kept in a clean and sanitary condition. All rubbish, tin cans, etc., must be

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

properly burned or buried during occupancy or upon removal to new sites.

25. General Conduct.

These stipulations have been made for the assistance and guidance of permittees and become a part of their grazing permits. If faithfully carried out they will promote the best interests of all concerned. This fact should be recognized by livestock owners and a spirit of hearty cooperation maintained. The Service desires permittee who will work with the forest and grazing officers. Those who comply with the stipulations will be given every reasonable consideration consistent with good business management, while those who disregard them will be denied the privilege of further grazing upon Indian reservations.

26. Applicability of Stipulations.

The above range control stipulations are hereby [135] prescribed for use in all grazing permits except as special provision shall be made by the Commissioner of Indian Affairs.

27. Interpretation of Stipulations.

The final interpretation of these stipulations shall rest with the Secretary of the Interior.

DEPARTMENT OF THE IN-
TERIOR, OFFICE OF IN-
DIAN AFFAIRS, WASH-
INGTON.

(Testimony of Albert E. Stephenson.)

Plaintiff's Exhibit No. 1—(Continued)

Approved: May 29, 1931.

C. J. RHOADS,
Commissioner.

DEPARTMENT OF THE IN-
TERIOR, OFFICE OF THE
SECRETARY, WASHING-
TON.

Approved: June 4, 1931.

JOS. M. DIXON,
First Assistant Secretary.

Mr. Allan: We likewise offer Exhibit No. 2, the map in evidence.

Mr. McCabe: No objection.

The Court: All right, they may both be received in evidence.

Whereupon, Plaintiff's Exhibit No. 2 was received in evidence, which said exhibit is a map of the Blackfeet Indian Reservation and will be certified to the Court of Appeals under order of this Court. [136]

Q. Are you familiar with Mr. Connolly's cattle, that run on this permit to graze on the Blackfeet Indian Reservation? A. Yes.

Q. What is Mr. Connolly's brand, please?

A. Mr. Connolly's brand is a P. Y. on the cattle on the left hip, and on the horses it is on the left jaw.

(Testimony of Albert E. Stephenson.)

Q. Now, when you say P. Y. just make that more definite, as to the type. How is that shown to be?

A. The P and Y are connected, and the Y hangs down from the bottom of the P. It is made like this. (Showing the Court.)

The Court: It is a Y upside down.

A. It is a Y upside down.

Q. In other words, it is a regular form of P upright, and the Y is upside down, and they both connect together? A. Yes.

Q. So that it makes it look like a P standing on a stand with some supports. Is that correct?

A. That is right.

Q. Have you had occasion to inspect the range on the Blackfeet Indian Reservation as to trespassing of cattle at various times? A. Yes.

Q. In relation to the Connolly cattle, what particular day did you inspect the range?

A. Well, the first time that I inspected the range for Mr. Connolly's cattle, was October 21, 1941.

Q. And who accompanied you at that time?

[137]

A. Mr. Girard and Mr. Barrett.

Q. Who is Mr. Girard? A. Charles R.

Q. What is his business or occupation?

A. He is Range Guard at the Agency.

Q. And who is Mr. Barrett. What is his first name?

(Testimony of Albert E. Stephenson.)

A. Eugene W. Barrett, and at that time he was working for the soil and moisture operations as Junior Range Examiner.

Q. On the Blackfeet Indian Reservation?

A. On the Blackfeet Indian Reservation.

Q. And in company with these two men where did you go?

A. We went out in township thirty-five north, range nine west, and in Section eleven we observed horses belonging to Mr. Connolly in trespass.

Q. How many horses did you see at that time and place? A. Thirty-six head.

Q. Did you observe any cattle in that vicinity?

A. No cattle on that date.

Q. What was the next occasion that you had to make observation? A. On January 28, 1942.

Q. What, if anything, did you see at that time?

A. Sections three and four, township thirty-four, range nine west, observed twenty-two head of cattle in trespass.

Q. Who did those cattle belong to?

A. Mr. Connolly.

Q. Who accompanied you at that time, Mr. Stephenson? A. Mr. Girard. [138]

Q. The same Mr. Girard as you spoke about being with you on October 21, 1941? A. Yes.

Q. Any other time that you made personal inspection of the range, Mr. Stephenson?

A. On January,—there were two other earlier dates than that, January 27, 1942, in the company of Mr. Barrett, in Section ten, township thirty-

(Testimony of Albert E. Stephenson.)

four north, range eleven west, we observed eight head of horses on Connolly's in trespass, and on the same day eighteen head of cattle in Section four, township thirty-four north, range nine west. Then on January 16th, with Mr. Girard, we observed seventy-eight.

The Court: What was that answer?

A. Seventy-eight head of cattle, in Section two township thirty-four north, range nine west.

Mr. McCabe: Thirty-five, or thirty-four?

A. Thirty-four.

Q. Any other date that you made personal inspection, Mr. Stephenson?

The Court: Section twenty-two, was that?

A. Section two.

The Court: Township thirty-four?

A. Yes, range nine. On Monday of this week Mr. Girdard and I were out, and in Section sixteen, township thirty-four north, range nine west, we observed seven head of Mr. Connolly's horses, and three head of his cows, and in Section eighteen, township thirty-five north, range ten west, we observed nine head of his horses.

Q. Now, directing your attention to this map, Mr. [139] Stephenson, I would like to have you step over here and point out the various places that you have been talking about, where you observed these trespasses in relation to Mr. Connolly's Unit, upon which he has a right to graze; first of all, will you please point out where Mr. Connolly's Unit is?

A. Unit number twelve is here.

(Testimony of Albert E. Stephenson.)

Q. Where was the trespass that you observed?

A. In Section eleven, township thirty-five north, range nine west, this section right here. (Indicating.)

Q. How far distant would that be from Mr. Connolly's Unit?

A. About the line of section eleven, would be north of this north line of Mr. Connolly's Unit.

Q. What is the next spot of trespass?

A. Sections three and four; this section in here. (Indicating.)

Q. How far would that be from Mr. Connolly's Unit?

A. The north line of those two sections are adjudicated with his Unit in section eleven, thirty-four north, range nine west. The north line of that section is a mile south of the south line of Mr. Connolly's Unit. Then in section ten, it lays west of section eleven in thirty-four, nine, of thirty-four north, range nine west, that is also a mile south of his Unit.

Q. What is the next place?

A. Section four in township thirty-four north, range nine. His section there is adjudicated to the Unit line, and section two of this section here (illustrating), lays between section eleven, and the Unit, range Unit [140] number twelve.

Q. Now, are you familiar with a well that Mr. Connolly uses for the watering of his stock?

A. The well is right there. (Indicating.)

(Testimony of Albert E. Stephenson.)

Q. Where is that well located, Mr. Stephenson, please?

A. On the northwest corner of section ten, township thirty-four north, range nine west.

Q. And how far is the location of that well from Mr. Connolly's grazing Unit?

A. Little over one mile south of the Unit line.

Q. Have you ever observed any of Mr. Connolly's cattle watering at that well?

A. I never observed them watering there, I have seen them around the place.

Q. You actually seen them around the well?

A. Yes sir.

Q. What is the lease that Mr. Connolly has, what is,—How many head of cattle or horses does it provide for. That is the permit, I should say.

Q. The permit on the Indian land covered by the permit calls for one hundred and fifty-three head of cattle, and then this off and on clause, where consideration is given for his deeded and otherwise controlled land in the Unit, a total of two hundred and forty head of cattle are permitted on the year around basis.

Q. Mr. Connolly's cattle to your knowledge grazed upon the Blackfeet Indian Reservation the year around, or are they taken off the Reservation at times?

A. They are on the Reservation the year around.

Q. To your knowledge does Mr. Connolly take care of [141] cattle for other people?

A. He has.

(Testimony of Albert E. Stephenson.)

Q. Has he at any time since the commencement of this action taken care of other people's cattle?

A. Yes.

Q. When was that. How many cattle does that consist of?

A. Last year Mr. Connolly took in some cattle for some gentleman down by Conrad, but we did not get the actual count. We didn't get an actual count on those cattle. I don't know just how many there were of them.

Q. Can you give an approximate account of them?

A. Approximately forty-five head.

Q. Did he take care of any other cattle on this Unit to your knowledge?

A. To my knowledge he took no more in since the beginning of this action.

Q. No, I mean at the time of this action, and prior to the action itself after the permit was issued to him?

A. It is my understanding that he——

Mr. McCabe: Just a minute. We object to any understanding, but it must be within his knowledge, within his own knowledge.

The Court: Yes, sustain the objection.

Q. Of your own knowledge?

A. To my own knowledge, I was not there on duty prior to August 1941, and as far as I know he had no cattle after my coming on in 1941, after I came on duty. [142]

(Testimony of Albert E. Stephenson.)

Cross Examination

By Mr. McCabe:

Q. Mr. Stephenson, directing your attention to plaintiff's exhibit number one, which has been received in evidence, I believe you stated the amount shown is two hundred and forty head of cattle?

A. Yes.

Q. And as I understand from that you meant that he had the right under his permit, as construed by your office, to graze two hundred and forty head of cattle on this Unit which you have indicated on the map exhibit two, as Unit twelve? A. Yes.

Q. And as I understand from that you meant that he had the right under his permit, as construed by your office, to graze two hundred and forty head of cattle on this Unit which you have indicated on the map exhibit two, as Unit twelve?

A. Yes.

Q. And in counting and in estimating, the two hundred and forty head of calves are not counted, that is, calves under six months of age?

A. That is right.

Q. Now, in addition to the land which Mr. Connolly had, the grazing permit to which you have testified as exhibit number one, he was the owner of other land in that area, was he not. He was the owner of other land that you know of?

A. Not within that particular area, no sir.

Q. South of that area over on Cut Bank Creek, a distance of around three or four miles, he had

(Testimony of Albert E. Stephenson.)

some land there upon which he had the right to graze cattle on? A. Yes.

Q. And then likewise over on Willow Creek, a distance of six or seven miles, possibly eight miles, he had other land upon which he had a right to graze cattle? [143] A. Yes.

Q. Don't you know off-hand of your own knowledge how many acres Mr. Connolly had altogether under his control, and on which he had the right to graze cattle and horses?

A. There was some deeded land involved there, which Mr. Connolly claimed, and which we have no reason to question. I have it pretty well in mind.

Q. And approximately ten thousand acres. Is that correct?

The Court: You mean ten thousand acres on the Indian Reservation?

Mr. McCabe: Yes.

The Court: That he owned or controlled?

Mr. McCabe: Yes.

The Court: Beside Unit twelve?

Mr. McCabe: Not including Unit twelve.

The Court: What is the acreage in Unit twelve?

Mr. McCabe: I think five thousand seven hundred acres, are shown on the exhibit, five thousand seven hundred and sixty acres in Unit twelve.

The Court: Aside from that he has four thousand three hundred acres too.

Mr. McCabe: Approximately. We will introduce the exact acreage.

Mr. McCabe: Q. Is that correct?

(Testimony of Albert E. Stephenson.)

A. It seems a little high.

Q. Somewhere, nine to ten thousand?

A. Yes.

Q. Now, Mr. Stephenson, how long have you been [144] Supervision on the Blackfeet Indian Reservation? A. Since August, 1941.

Q. Since August, 1941? A. Yes.

Q. And prior to that time who was in charge?

A. Mr. Henry Wershing.

Q. Is Mr. Wershing in the country, or has he been moved to another location?

A. He has been moved.

Q. On these permits of the character of permit number one, or exhibit number one which has been introduced in evidence, that contemplates a grazing period of twelve months to the year, does it not. That is correct, is it not? A. Yes.

Q. And under the construction of these permits, the policy of your office is that if a person does not want to graze the permit for the full twelve months, with the maximum amount of cattle referred to in the permit, he has the privilege of increasing the number proportionately to the number of months that the grazing is reduced?

A. That is not the policy, no. It has been allowed, but it is not the policy.

Q. Isn't it a fact that in the permit, in some of these permits they have a provision expressly—

A. No.

Q. They have not? A. No.

(Testimony of Albert E. Stephenson.)

Q. I believe you stated that Mr. Connolly's brand [145] is P with a Y being below, and attached to the left hip for cattle, and the same brand on the left shoulder for horses? A. Left jaw.

Q. I beg your pardon. I misunderstood you. Now, the first time that you went out to inspect the range, as you stated, for trespass of cattle, I think it was October 21, 1941, in company with Mr. Girard and Patterson? A. Mr. Barrett.

Q. I will stand corrected. And you went over into township thirty-five north, range nine west in section eleven? A. Yes.

Q. And in fixing that as section eleven in township thirty-five north, range nine west, how did you identify that ground, on the ground out there, as being section eleven, township thirty-five north, range nine west?

A. By the location of the allotment pins.

Q. And whose allotment pins did you so locate at that time?

A. It was the allotment of Emma C. Blood.

Q. And how many acres in her allotment?

A. I would have to check the plat book.

Q. Just approximately?

A. I think it is three hundred and twenty.

Q. And is there some other allotment in there, in that section eleven?

A. Yes, Mollie Blood.

Q. How do you spell that? [146]

A. M-o-l-l-i-e.

(Testimony of Albert E. Stephenson.)

Q. Blood? A. B-l-o-o-d.

Q. And approximately how many acres did she have?

A. I believe three hundred and twenty.

Q. Whose else allotment was in that section that you identified at that time?

A. As I recall it those two three hundred and twenty's that would be the complete section.

Q. Oh yes, I beg your pardon. I was thinking of one hundred and sixty acres each. Do you recall upon which of these allotments the cattle that you observed at that time were grazing?

A. As I recall they were scattered over both of them.

Q. They were located on both of them?

A. Yes.

Q. Can you give us approximately the number of head that was on the Emma C. Blood allotment?

A. No, there was no,—both of them being Indian land, there was no attempt made to find whether they were on the Emma C. Blood, or the Mollie Blood land. They were both Indian land,—both being Indian land. They were on one or the other.

Q. You say there were this number of head on that part of the ground in section eleven?

A. Yes.

Q. Do you recall at this time about what part of the section you located that stock on?

A. No, I don't recall, but I can refer to the plat book, it might give a picture of it. I don't recall [147] it right now.

(Testimony of Albert E. Stephenson.)

Q. How long were you on that tract of land at the time?

A. Oh, probably three-quarters of an hour.

Q. And in making the count, did you use one of these counting machines, or how did you count them?

A. No, we counted them, kept track of them in our minds. Each of us made our count and compared our totals.

Q. Each made an individual count?

A. Yes.

Q. When did you next return to that particular section?

A. Oh, I don't recall whether I went back to that particular section at any time since.

Q. As I understand then, you don't know just how long these particular cattle had been grazing upon that particular section?

A. No, sir.

Q. Or how long after you left there they continued to graze on that section? A. No.

Q. You don't know? A. No.

Q. Now, turn to the next place where you located the cattle or horses, or whatever they are?

A. On January 28, 1942.

Q. And that was after this action was instituted, was it not? A. Yes.

Q. And at that time did you identify the section number by the allotment pins? [148] A. Yes.

Q. Whose allotments were embraced in that?

(Testimony of Albert E. Stephenson.)

A. I would have to refer to the plat book on that, as I did not put that in my notes.

Q. Well, to shorten the examination, I will ask you if you can state from referring to the plat book the names of all of the allottees who have land in Unit number twelve?

A. All the allottees in Unit number twelve?

Q. No, not number twelve, but these other Units that you have testified to?

A. Yes, all the allottees are shown.

Q. I wish you would give me the names of them and the number of acres, please?

The Court: You mean the amount of acreage of the allottees on the land upon which the witness has testified the cattle were grazing, outside the Unit twelve.

Mr. McCabe: Yes, your Honor.

A. Well, the allottees in section three, township thirty-four north, range nine west are Barney Calf Boss Ribs; he has two lots there, one of them figures 39.77 acres. The other is 39.87 acres. Dan Calf Boss Ribs,—

Mr. McCabe: I think I can shorten this a little further. Could you just take a piece of paper and figure out the total acreage and the names of the allottees of land in that area where you saw the cattle trespassing, just the total acreage and the names of the allottees. You don't have to separate them. I want the names of the allottees, and the total acreage embraced in the allotment of the allottee? [149]

(Testimony of Albert E. Stephenson.)

A. I don't know whether I quite understand what it is you want, Mr. McCabe.

The Court: If you have an idea, showing permits, or anything of that sort, to graze on these allotments, you would have to separate them would you not, to show the difference?

Mr. McCabe: Yes, I thought I could, but maybe we better separate the allotments.

The Court: If that is your purpose.

Mr. McCabe: It is the purpose, your Honor, one of the purposes, your Honor.

The Court: Cannot you go ahead and go through that, and put it on a piece of paper and give it to counsel. That will save their giving the name and the description of the property grazed over, outside of Unit twelve, belonging to the allottees.

Mr. McCabe: And the number of cattle. I think the number of cattle grazed upon that particular tract, because that will reflect on the damages in this case.

The Court: Yes.

Q. Mr. Stephenson, in this area where these tracts or Units, range Units are located which you have identified on plaintiff's exhibit number two, there are quite a number of stockmen running sheep and cattle in that general area, isn't there?

A. The majority of them is sheep.

Q. The majority is sheep? A. Yes.

Q. And adjoining Unit number twelve, all

(Testimony of Albert E. Stephenson.)

around there, [150] are there range Units that have been leased to other persons?

A. All the range Units are leased to other people.

Q. So that, as I understand, all the land on the Blackfeet Indian Reservation in the general area of the location of Unit number twelve, which we will call the Connolly land, there are stockmen running cattle and sheep? A. Yes.

Q. Now, is this area fenced, or is it open prairie land, grazing land?

The sheep ranges are open. The bulk of the cattle ranges on the Reservation are fenced.

Q. The bulk of the catle ranges? A. Yes.

Q. When you say fenced, do I understand you to say that they are surrounded by fence, each of the cattlemens' holdings, or range Units?

A. Yes, sir.

Q. Are all surrounded by fence? A. Yes.

Q. And have you examined those fences, the state of repair particularly the period of time from August of 1941, up to the time and during the time that you saw the cattle of Mr. Connolly on the various Units?

A. I haven't examined each individual fence.

Q. Your statement then that all the holdings of the cattle men who are entitled to run their cattle on the Reservation is fenced, is that based on your own knowledge, or from what somebody told you?

[151]

A. It is based on my own knowledge.

(Testimony of Albert E. Stephenson.)

Q. You have examined the area as to fences. What kind of fences are they?

A. Barbed wire fence.

Q. Is it one, two or three strand barbed wire?

A. I think three strand is the common rule.

Q. What kind of posts?

A. I don't know. I believe some of them are, or most of them are split cedars.

Q. How far apart? A. Probably a rod.

Q. During the period of time in which you saw Mr. Connolly's cattle as you say on these different tracts of land, how long before that had it been since you examined the fences around these allotments, cattle allotments?

A. When I first saw them, I don't believe I examined any of them, I had not been on the Reservation but a very short time.

Q. So that your testimony with reference to the fencing relates to a time after the commencement of this action? A. Yes, sir.

Q. How long after the commencement of this action does your testimony relate, approximately?

A. The first fence Units that I have knowledge of was in November.

Q. Of 1942? A. No, of 1941.

Q. 1941? A. Yes, sir. [152]

Q. Possibly I misunderstood you. I thought that you said that you had not examined the area for fences until after the commencement of this action.

(Testimony of Albert E. Stephenson.)

A. I was thinking this action was commenced in November, 1941.

Q. Well, I think it was the 22nd of November. So that it was after this action was instituted?

A. Some time in November when I first observed the fenced Units.

Q. And was after this action was instituted?

A. It probably was.

Q. Now, the purpose of issuing these Units by the Government is to have the lease used for the purpose of ranging, in other words, to get the full benefit of the range for grazing of livestock on the Reservation? A. Yes.

Q. Of course, when you issue a permit, or a lease for grazing purposes to certain Units, to limit the number of stock you will permit on that Unit to the estimated carrying or grazing capacity of the range for the particular class of stock that you were issuing the permit for?

A. Yes, that is right.

Q. And in issuing these permits, you keep in mind more or less the fact of the various rights of the surrounding stockmen and their grazing rights in issuing the permit?

A. Most of the permits are issued, so far as the white operators are concerned, are issued as the result of advertising and competitive bidding. [153]

Q. What I mean is that in issuing them you have in mind, and the knowledge that there are other men who have certain rights, and grazing rights

(Testimony of Albert E. Stephenson.)

in the area to a certain number of cattle and a certain number of sheep?

A. On a certain range Unit, yes.

Q. You are also acquainted with the fact, your office, that it is a natural characteristic of livestock, and particularly cattle and horses to stray of their own inclination over unfenced areas of land in searching for feed and water, or as the result of storms, or being driven by various agencies. You are familiar with that? A. Yes, sir.

Q. And that is the condition that you have in mind when permits are issued, the general characteristics of cattle, and the custom of stockmen in that neighborhood with reference to grazing the cattle? A. Yes, sir.

Q. And as a matter of fact it is the policy of your office not to consider as trespass any cattle which may inadvertently follow their natural proclivities, or inclination to stray from one unit to another, but which are returned by the owner of the unit?

A. That depends on how much diligence the owner puts out to return them.

Q. With reference to these number of cattle that you saw grazing, Mr. Connolly's how long did you observe that those cattle remained on the particular unit, what is the longest period that you saw them there? [154]

The Court: You mean on one particular allotment?

(Testimony of Albert E. Stephenson.)

Mr. McCabe: Yes, on any part of that particular tract where you saw them?

A. I did not have the time to stay out on the hill and wait for them to move. We just observed them in one place, and go out and count them, and the next time they would be in the general vicinity, or be some place else.

Q. You don't know what effort the owner in the meantime may have exerted to take them back on to their own range?

A. Not definitely.

Q. You know that it is the custom of stockmen, cattle and sheep men to keep their own cattle on their own range, and try to keep the other man's cattle off that range. That is true up in that area, is it not?

A. In that particular area where these are involved, there is no large amount of cattle right in that area. It is all sheep that is around on it.

Q. In making your investigations on the days that you did, that you observed Mr. Connolly's cattle in that area, did you observe any cattle bearing other brands than his? A. No.

Q. And so that I may understand you, and be correctly advised, then at no time when you went out and observed Mr. Connolly's cattle grazing on any of the land described by you in your testimony, did you see any cattle or horses or sheep grazing that same area? [155]

A. If you put it that way, yes.

(Testimony of Albert E. Stephenson.)

Q. So, how many cattle did you see grazing in that area at that time, other than Mr. Connolly's?

The Court: "That area." You must be fair with the witness. That might not be a very comprehensive question to the witness. Describe it more definitely.

Mr. McCabe: I will.

Q. On the allotments that you examined at that time, how many other cattle did you see grazing on those allotments?

A. Do you refer to the groups of cattle that we counted in trespass, I don't recall noticing any other brands other than Mr. Connolly's in the bunch. However, there were some that we omitted because we could not definitely identify the brand on them.

Q. So that there were other cattle. How many head then would you say were grazing up on that particular allotment?

A. I couldn't say. It all depends on the particular bunch of cattle?

Q. You made no count of these particular cattle grazing at that time?

A. We presumed that they were——

Q. Just answer my question. You made no count?

A. No, we just skipped those cattle there, we could not identify the brand.

Q. Did you count any other cattle than Mr. Connolly's cattle on those occasions?

A. Not at that time, no.

Q. At that time did you see any sheep, or any horses [156] grazing?

(Testimony of Albert E. Stephenson.)

A. Not on the particular land where the cattle were, on the particular allotment, no.

Q. Did you see any horses?

A. Not on those particular lands.

Q. So that at no time did you see sheep or horses grazing upon those allotments, when these cattle of Mr. Connolly's were grazing upon this land?

A. No.

The Court: You did not count the other brands because they were hard to determine?

A. We couldn't identify them by the brands.

The Court: Because they were small in numbers? A. Yes.

The Court: There were very few, you meant to say? A. Yes.

Mr. McCabe: Q. Mr. Stephenson, it is the policy of your office with respect to these various grazing Units, that where the person that has the right to graze the Unit makes no objections to stock coming over and entering upon the lands, you leave that as a matter between the various persons who are entitled to the grazing right in that area. Is that true?

A. No, that is not true. That is not the policy. The Units are set up, the carrying capacity. Unit lines are established, and we expect more or less conformity to those lines, in order that we can keep *tract* of the stock on the Units.

Q. Did you ever have any complaint from any of these [157] men concerning Mr. Connolly's cattle on these lands, or Units? A. No.

The Court: What do you mean, the allottees?

(Testimony of Albert E. Stephenson.)

Mr. McCabe: Well, the men who are entitled to these grazing permits out on these other Units.

A. I would not exactly call them complaints. I have had them call my attention to the fact that they had been out there in trespass.

Q. What did they say to you, substantially?

A. I don't remember exactly what they did say.

Q. You don't remember? A. No.

Whereupon a recess was had.

After Recess

Q. Mr. Stephenson, under the rules and regulations relative to grazing on the Blackfeet Reservation, the Indian has the privilege of taking outside stock, that is stock other than his own, and grazing them upon any lands for which he has been issued a permit, providing he has the approval of the Indian Office at Browning to do so. That is true, is it not?

A. That is right, yes.

Q. And you testified about forty-five head from a man at Conrad. Did I understand you correctly?

A. Yes.

Q. And that was before this action was instituted? A. No, after.

Q. Oh, after the action was instituted?

A. Yes. [158]

Q. You testified about a well for watering stock in the northwest corner of section ten, township

(Testimony of Albert E. Stephenson.)

thirty-four north, range nine west, used by Mr. Connolly. Do you recall your testimony?

A. Yes.

Q. That is an open watering place, is it not where any cattle in the area have the right to go to water?

A. Any stock that has the right to be on the area has a right to go there to water.

Q. Isn't it true that under the grazing regulations in effect on the Blackfeet Indian Reservation that you have to keep your water holes open for watering stock generally; that you are not permitted to close off a water hole?

A. Watering stock that are entitled to be on that area.

Q. By that area, do you mean on that particular Unit, or in the general area accessible to the water hole?

A. On the particular range Unit on which the water hole happens to be located.

Redirect Examination

By Mr. Allan:

Q. Just to straighten up that point, were Mr. Connolly's stock entitled to go down to this well to water?

Mr. McCabe: To which we object on the ground that it calls for the conclusion of the witness.

The Court: I don't know. He has testified. You have both brought out everything with respect to the permit that you thought material, whether it was grazing. If he knows, if the permit covered

(Testimony of Albert E. Stephenson.)

that. [159] Does the permit cover that feature of the case, or where they used the water holes, or watering places.

A. The permits set out the area on which the stock were permitted to graze, yes.

The Court: Is there any customary regulations with respect to them going on for the purpose of watering stock.

A. If it is necessary for a border liner, to use it for both grazing units to use the same water, then an adjustment of the lands are made to permit that.

The Court: That is under the direction and approval of the Indian Office?

A. Yes.

The Court: I see. I wanted to straighten that out.

Mr. Allan: Q. Relative to the stock that an Indian Permittee is allowed to take in, must that stock be within the numerical number contained in his grazing permit? A. That is right.

Q. Referring to the various permits on which you noticed the trespass, that you testified to here before, Mr. Stephenson, were all of these allotments within the administration jurisdiction of your office, the Blackfeet Indian Agency?

A. Yes, they were.

Q. In other words, had any of these allotments held by the Indian allottees without the authority of your office to administer them?

A. No, none of them had. [160]

(Testimony of Albert E. Stephenson.)

Q. It was during the year 1941, after 1940, 1941, what was the annual grazing cost for one horse on the Blackfeet Indian Reservation?

A. It averaged four dollars and fifty cents a year for a horse.

Q. And what was the average grazing cost for one cow? A. Three dollars and sixty cents.

Q. You spoke about Mr. Wershing being your successor in interest up there. Do you know personally where Mr. Wershing is at the present time?

A. Yes, I understand he is in the armed forces.

Q. Have you had any conversation since you have been assigned to the Blackfeet Indian Reservation with the defendant, Mr. Connolly, about the grazing of his stock? A. Yes, I have.

Q. What were these conversations, please?

A. First time I met Mr. Connolly after I came on duty, it was a few days after I came on duty, he came into my office and we talked over this trespass situation, and I advised him then that it would be necessary to restrict his cattle, at least a whole lot more than they had been in the past to the area that was permitted to him.

Q. Did you explain to Mr. Connolly that you were sent there to enforce the rules and regulations of the Indian Department about the grazing of cattle on the Blackfeet Indian Reservation?

A. Yes.

Q. Did you ask for his co-operation in these matters? [161] A. Yes, I did.

(Testimony of Albert E. Stephenson.)

Q. What, if anything, did Mr. Connolly tell you about that?

A. Mr. Connolly seemed to me——

Mr. McCabe: We object to that. You confine your testimony to the statement made by Mr. Connolly.

The Court: Yes.

Q. Just give the facts.

A. Mr. Connolly told me then that those were Indian stock; that they could run anywhere on the Reservation that he wanted them to.

Q. Now, in relation to the grazing that is allowed on the Blackfeet Indian Reservation, Mr. McCabe as counsel for Mr. Connolly questioned you as to the policy of protecting the range. As I understand it, just to shorten this matter up, the whole Blackfeet Indian Reservation is worked out in grazing units, is it not?

A. Yes, that is right.

Q. And the duty that the land will carry for stock is worked out? A. Yes.

Q. And that is the policy that you were talking about at that time? A. Yes.

Recross Examination

By Mr. McCabe:

Q. Mr. Stephenson, did you as an officer, or in your personal capacity, ever make a count of the Brian Connolly cattle, owned by him and grazing on the [162] Indian Reservation?

A. No, I never made a count.

Q. You never made it? A. No, sir.

(Testimony of Albert E. Stephenson.)

Redirect Examination

By Mr. Allan:

Q. Right along that same line, have you ever checked the records to determine the number of cattle that Mr. Connolly has on the Indian Reservation?

A. Yes, I checked the records of the county. I checked the mortgage covering his livestock.

Q. What did that show?

Mr. McCabe: To which we object on the ground that it is not the best evidence. That the county record is the best evidence as to any personal assessment made, or any list, to identify the record and to show that it is a proper public record.

The Court: Yes, get a copy of the record, and see whether it corresponds, then we will have both sides.

(Witness excused.)

Whereupon

CHARLES GIRARD,

a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination

By Mr. Allan:

Q. Please state your name?

A. Charles Girard.

Q. What is your business or occupation?

(Testimony of Charles Girard.)

A. Assistant Range Guard at the Indian Service.

Q. And to what particular Reservation are you assigned? A. Blackfeet. [163]

Q. How long have you been in that capacity of Range Guard on the Blackfeet Indian Reservation? A. Five years.

Q. Do you know Brian Connolly, one of the defendants in this action? A. Yes.

Q. Do you know his son? A. Yes.

Q. What is his son's name, please?

A. Daniel.

Q. Dan Connolly? A. Yes.

Q. I believe that in the course of your official duties, you have had occasion to inspect the range for cattle that were found on the range at various times? A. Yes.

Q. In relation to the Connolly cattle, did you have occasion to make an investigation on August 6th, 1941? A. Yes.

Q. Who accompanied you at that time, Mr. Girard? A. Mr. Wershing.

Q. That is Henry F. Wershing? A. Yes.

Q. Who was formerly in the Indian service, and who is now in the United States Army?

A. Yes.

Q. What, if anything, did you observe on the range with reference to the Connolly cattle?

A. I counted forty-eight head of horses. [164]

Q. Where did you count these horses?

(Testimony of Charles Girard.)

A. Twenty head of horses were on Sections 23, 24, 25, 26 and 27, and 34 in township thirty-five north, range ten.

Q. And what brands did these horses have?

A. P. Y. on the left jaw.

Q. That is the P. Y. brand that we have been discussing here before? A. Yes.

Q. Then what about the cattle. Did you observe any cattle at that time and place?

A. Yes, there was also twenty-eight head of horses in that count too. There was forty-eight altogether. There was twenty-eight head in sections three and ten, township thirty-four, range nine.

Q. Does that cover all the horses?

A. That covers all the horses.

Q. How about the cattle?

A. Twenty-five head of cattle were in sections eleven and fourteen, township thirty-five, range nine.

Q. And directing your attention to the inspection that you made on July 24, 1941, I will ask you who accompanied you at that time?

A. July 24th, 1941, Mr. Eugene Barrett.

Q. What was Mr. Barrett's capacity?

A. He was Assistant Range Guard.

Q. And what, if anything, did you observe then?

A. Twenty-five head of horses in sections twenty and twenty-one, of township thirty-five, range nine.

Q. Then on August the 21st, did you have occasion [165] in 1941,—did you have occasion to

(Testimony of Charles Girard.)

make another inspection October 21st, I should say?
A. October 21st.

Q. Who accompanied you at that time, Mr. Girard?
A. Mr. Eugene Marrett.

Q. Anyone else?

A. And Mr. Stephenson.

Q. Mr. A. E. Stephenson?

A. Mr. A. E. Stephenson.

Q. What, if anything, did you see then?

A. Thirty-six head of cattle, part of which were branded P. Y. on the left hip, and A. X. on the left hip.

Q. Are you familiar with the brand A. X. on the left hip?

A. That is Dan Connolly's brand.

Q. Is that the son of defendant Connolly, Brian Connolly?
A. Yes sir.

Q. Have you at any time ever observed cattle of other people running with the Connolly cattle?

A. There were seventy-five or seventy-eight head of Mr. Swanson's cattle.

Q. What time did they run with the Connolly cattle?
A. In the summer of 1942.

Q. Any other person's cattle?

A. Mrs. Jessie G. Sinclair.

Q. How many head of cattle of hers did you observe?
A. One hundred head.

Q. And during what period of time was that?

[166]

A. That was the summer of 1942.

(Testimony of Charles Girard.)

Q. Any cattle belonging to any other person, did you notice there?

A. Only the Ryan cattle from Conrad.

Q. And how many head of Ryan cattle?

A. Oh, there were somewhere around forty-five head.

Q. And during what period of time did they run on the range?

A. I have to refer to the count record that I made on some of those.

Q. It is the official record of the Department that you want to refresh your recollection on. Is that correct?

A. Yes sir.

Q. And what does that show you now?

A. Well, the cattle, the man's name was not Ryan, it was Payne. Forty-two head.

Q. During what period of time did they run with the Connolly cattle?

A. They were brought up in April, 28th; they run during the summer season.

Q. What year?

A. 1942.

The Court: You say they were brought there. Who brought them up there?

A. Mr. Payne brought them up to the Connolly range.

Q. *What* was Payne instead of Ryan. You made a mistake in those names?

A. Pardon.

Q. That was Payne instead of Ryan. You made a [167] mistake in those names. Is that correct?

A. Yes.

Q. And on the Sinclair cattle what year did you say that was. Was that in 1941 or 1942?

(Testimony of Charles Girard.)

A. I don't have the notes on it.

Q. I think the record will show that was 1941?

A. 1941. I don't have the record with me.

Cross Examination

By Mr. McCabe:

Q. Mr. Girard, you stated that Mr. Payne brought some cattle to the Connolly ranch in 1942, in April 1942? A. Yes.

Q. And did you see Mr. Payne bring them to the ranch? A. Yes.

Q. And what ranch did he bring them to?

A. He brought them to the Connolly ranch on the Milk River,—no, on Willow Creek.

Q. Milk River?

A. No, Willow Creek it is.

Q. And at the time you observed these cattle on the location concerning which you have testified to, did you see other cattle and horses running on the same lands, or the same allotment?

A. I seen some of Mr. Connolly's brand out there. Some of Mr. Connolly's cattle there and horses.

Q. Besides Mr. Connolly's, and his brand, did you see any other cattle running on these allotments when you observed Mr. Connolly's cattle?

A. There was a few there. There was a few head of [168] Chet Kmbalil's but that was on patented land.

Q. Were the cattle of Mr. Connolly's that you saw there on patented land?

(Testimony of Charles Girard.)

A. They were unloaded there and later moved to the Unit twelve.

Q. They were unloaded on patented land and then moved to Unit twelve?

A. Yes, and there is allotted land in connection with the patented land.

Q. You say they were unloaded as I understand it, on patented land?

A. I never checked the location where they were unloaded, but they were unloaded in the vicinity of his ranch where the buildings were.

Q. You mean the Milk River ranch?

A. On the Willow Creek ranch.

The Court: He said Willow Creek.

Mr. McCabe: Oh, Willow Creek ranch?

A. Yes sir.

Q. And whose cattle did you say those were?

A. Payne's cattle.

Q. You were informed as an Officer of the Indian Department that those cattle were going to be unloaded at that place at the time, were you not?

A. Yes.

Q. In this area where you observed the cattle which Mr. Connolly had, which had Mr. Connolly's brand on, or the cattle which bore Mr. Connolly's brand, did you see any horses or sheep belonging to other persons grazing in that area, or along on the same lands, or [169] on the same allotment?

A. That belonged to anybody else?

Q. Yes, did you see sheep or horses other than those bearing Mr. Connolly's brand grazing on the allotments?

(Testimony of Charles Girard.)

A. Well, the sheep were on the Units where they were supposed to be.

Q. That is, you say there were sheep grazing on the same Unit?

Mr. Allan: We object to this line of testimony. If counsel is trying to show there are sheep in the country, because there are undoubtedly sheep where they belonged as the witness has just testified.

The Court: I think he ought to make it more definite; he ought to inquire whether the witness saw sheep or cattle bearing other brands than the Connolly brand, on the particular sections where he has described the Connolly horses and cattle were running when he made his inspection.

Mr. Allan: Even if there were other trespasses, it makes no difference.

The Court: No, he is trying to establish a general trespass, running anywhere and everywhere. I should think that was the trend of it.

Mr. McCabe: In other words, the defendant is charged with committing so much damage. I am trying to show there were other cattle there running on the area.

The Court: We will take care of that later on.

Q. Now, Mr. Girard, at the time when you saw cattle and horses carrying the brand of Dan Connolly or Brian [170] Connolly on the particular land where they were grazing, and by the particular land I mean the particular allotments embracing the land upon which the cattle or horses were graz-

(Testimony of Charles Girard.)

ing, were there other sheep or horses or cattle grazing on those same allotments?

Mr. Allan: That is objected to as immaterial; not pertaining to any issue involved in this case.

The Court: I will let it go in under your objection. You may answer the question.

A. There were sheep in the same vicinity, but they had a right to be there because the Unit was leased to the man that was running the sheep, and they had a right to be there.

Q. Were there also cattle and horses that had a right to be there grazing upon the same land?

A. No.

Q. Just sheep?

A. Yes. The sheep had a right to be there, the cattle and horses did not.

Q. Was there any other stock that had a right to be grazing upon that particular area, or on that particular allotment, grazing there at the time?

A. No sir.

Q. So that the only things that were grazing there were sheep, they were rightfully and lawfully on that allotment?

A. The sheep had a right to be there.

The Court: What do you mean, that the sheep had a right to be there?

A. The land that is in discussion here is within a [171] Unit which is a sheep Unit, and the Connolly horses and the Connolly cattle were in trespass on that Unit, if I get the question.

The Court: All right, I understand.

(Witness excused.)

EUGENE W. BARRETT,

a witness called and sworn on behalf of the Government, testified as follows:

Q. Will you please state your name?

A. Eugene W. Barrett.

Q. What is your business or occupation?

A. At the present, or at the time that this action was instituted?

Q. Cover the whole matter. What is your present occupation or business?

A. I am Assistant Range Examiner on the Rosebud Indian Reservation in Rosebud, South Dakota.

Q. How long have you been engaged in that capacity? A. About six months.

Q. Before that, what were you doing?

A. I was Examiner, I was Junior Range Examiner with the soil and moisture conservation operations on the Blackfeet Indian Reservation.

Q. How long were you on the Blackfeet Indian Reservation?

A. Approximately twenty months.

Q. Were you there during the season of 1941?

A. Yes sir.

Q. Did you have occasion to make inspections on August the 8th, 1941, relative to cattle grazing, matters of that kind? A. Yes sir.

Q. With whom were you associated? [172]

(Testimony of Eugene W. Barrett.)

A. Mr. Girard.

Q. What, if anything, did you see on August 8th, 1941, with relation to the southwest quarter of the northeast quarter, township thirty-two north, range nine west?

A. May I ask you to repeat that again. It is some time ago, I will have to refresh my recollection.

Q. That is the southwest quarter of the northeast quarter of section thirty-two, range nine west?

A. Mr. Girard and I counted two head of cattle on section twenty-two, thirty-four, nine; twenty-three head of cattle on section sixteen, twenty-one, thirty-five, nine, and twenty-five head of horses on section eleven, thirty-five, nine.

Q. Now, do you know where the Blood allotments are located? A. Yes, sir.

Q. Did you do any particular work on the Blood allotments? A. Yes, sir.

Q. What was the type of work that you were doing on the Blood allotments?

A. With the Court's permission, I will explain what I was doing. I was sent to the Blackfeet as a technician on range management with chief concern for the conservation of soil, moisture and grasses. In order to establish a basis for our survey, I took it upon myself to keep track of the cattle as we saw them on the Reservation, and *now*

(Testimony of Eugene W. Barrett.)

knowing who had the Units at the time, or anything about it, I jotted down a few notes and when we would come back in the office, why [173] we would find out to see whether or not that stock was where it rightfully belonged. I was conducting a survey for range improvement and a summary of the condition of the range. My copatriot was examining the soil and classification of agricultural or non-agricultural soil at that time.

Q. How often were you on the Blood allotments that you have referred to?

A. I imagine we passed through the Blood allotments, traveling through our respective areas every day for two weeks.

Q. About what time of the year was that?

A. That was during the summer of 1941.

Q. Around what month would it be?

A. Oh, I imagine it was some time in July or August and September; somewhere in there.

Q. And how often did you see the Connolly cattle on that Blood allotment?

A. May I make a general statement to that effect?

Mr. McCabe: I think he should be limited to answer the question, what he saw, the number, and what the brands were.

The Court: He traveled over the Blood allotments every day for two weeks. How many cattle did he see during the time he traveled over them. Was that two weeks continuous? A. Yes.

(Testimony of Eugene W. Barrett.)

The Court: What did you mean by saying July, August and September?

A. Those were the months, if I may explain, we [174] covered the entire Reservation during that summer.

The Court: Oh, I see. These two weeks you were on the Blood allotments.

A. We would go through that area.

Q. Now then, tell us?

A. I would say every day that I passed through that area I saw horses and cattle on the Blood allotments.

Q. Did you identify any of these horses?

A. On one or two occasions, yes.

Q. What did you determine to be their *identify*?

A. They were chiefly Connolly horses, and I can probably check on the affidavits to that effect. Would you like me to do that?

A. Please check the affidavits, and refresh your recollection.

A. There is an affidavit by myself as of August 20, 1941. On the day of August 13th, about four o'clock in the afternoon in the company of Darrell Young, my associate, we counted thirty-two head of horses bearing the P. Y. brand on the left jaw; thirty-two horses were on the south half of section eleven, thirty-five, nine.

Q. Is that the Blood allotment?

A. I believe it is. I think there is a reservoir there that identifies it as such.

Q. Then directing your attention to the partic-

(Testimony of Eugene W. Barrett.)

ular date of August the 13th, I will ask you what, if anything, you observed or saw with reference to the Connolly cattle on that date, Mr. Barrett?

A. I presume that is the one that we just talked about. [175] The date was August 13th, the affidavit was sworn to August 20th.

Q. We have covered August the 8th, haven't we?

A. Yes.

Q. And August the 13th? A. Yes.

Q. Now, referring to the date of October 24th?

A. Yes.

Q. I will ask you where you were on that date?

A. I was in company with Mr. Stephenson and Mr. Girard, inspecting ranges.

Q. And in what particular part of the country were you?

A. It was in the vicinity of Emma C. Blood's allotment.

Q. Is that on the Blackfeet Indian Reservation?

A. Yes, that is the allotment that we have been talking about.

Q. What, if anything, did you see there?

A. We counted thirty-six head of cattle, part of which were bearing the brand P. Y. on the left hip, and the rest of the cattle, of that thirty-six head were branded A. X. on the left hip; that A. X. brand appearing in this affidavit belonged to Daniel Connolly.

Q. Where did you see these cattle. In what part of the country?

A. Thirty-six head of cattle were on the north

(Testimony of Eugene W. Barrett.)

half of section eleven, thirty-five, nine; the same being part of the allotment of Emma C. Blood, Blackfoot allottee number two thousand seven hundred and forty-two, and the south half of section eleven being part of the [176] allotment of Mollie Blood, allotment number two thousand seven hundred and forty-three.

Q. Going back and directing your attention to July 24, 1941, I will ask you where you were on that particular date, and who accompanied you?

A. On that date, July 24, about three thirty in the afternoon while in company with Charles Girard, the Junior Range Guard, we counted twenty-five head of horses bearing the brand P. Y. on the left jaw.

Q. Where did you count these horses?

A. They were on the allotted land embraced in sections twenty-one, twenty, in township thirty-five, range nine.

Cross Examination

By Mr. McCabe:

Q. Mr. Barrett, that is the name of it not?

A. That is right.

Q. I noted, or I noticed in your testimony that you are testifying from a memorandum, or some paper. Your testimony is based entirely upon these papers with respect to what you observed on these different dates, as a memorandum in writing?

A. These are affidavits.

Q. Are those the affidavits that you made yourself?

(Testimony of Eugene W. Barrett.)

A. Yes. Would you like to see them?

Q. No, I am merely trying to identify the papers. You say these affidavits were made at the time and filed with the Indian Department, or Indian Office?

A. Yes.

Q. At the time when you say the cattle and these horses [177] bearing the Connolly brand, did you see on the same allotment horses or cattle or sheep belonging to someone else, or other horses, cattle or sheep?

A. Are you talking about Mr. Brian Connolly, or both the Connollys?

Q. Both of them, other than their cattle and brands, Brian and Dan Connolly, both.

A. No, sir.

Q. So that at no time on these occasions that you were out there, did you see cattle or horses or sheep bearing any other brands than such as you have testified to?

A. Yes. I saw sheep on the Unit surrounding the Connolly Unit on several occasions, but they were rightfully there.

Q. I am talking about the land that you saw Connolly horses and cattle on, on those lands, were they not?

A. No, definitely not. You mean interspersed with other cattle?

Q. No, on the same allotted land, not removed from it, but on that same particular allotment as the Connolly horses and cattle were grazing?

A. No, sir.

(Testimony of Eugene W. Barrett.)

Q. You never saw any sheep or anything?

A. No, sir.

Q. Now, on these occasions on which you observed the cattle and horses bearing Connolly's brand, grazing on that particular tract of land, did you stop to observe how long they were there?

A. No, sir. [178]

Q. You didn't pay any attention to that?

A. No, we saw horses. Horses are easily identified by certain characteristics. You notice, after you are used to being in a certain area you will notice different bands of horses and cattle.

Q. So, after the first time you observed horses and cattle on that land, I understand you didn't pay any attention to what brands the horses bore on subsequent dates? A. No.

Q. No. That is all.

Witness excused.

Whereupon

DARRELL P. YOUNG,

a witness called and sworn on behalf of the Government, testified as follows:

Direct Examination

By Mr. Allan:

Q. Will you please state your name?

A. Darrell P. Young.

Q. What is your business or occupation?

A. Farm Agent.

(Testimony of Darrell P. Young.)

Q. Where are you located?

A. Blackfeet Indian Reservation.

Q. When you say "Farm Agent," just give us a definite detail of what your duties are?

A. My duties are to aid the Indian farmers and stock growers on the Reservation in the production of livestock and farm products, and other agricultural enterprises which they may undertake. [179]

Q. You are then employed by the Indian Service?

A. Yes.

Q. And what is your particular assignment at this time, what Reservation, I mean?

A. Blackfeet Indian Reservation.

Q. How long have you been assigned to the Blackfeet Indian Reservation?

A. Thirteen months in the capacity of Farm Agent.

Q. And prior to that time what did you do?

A. I was working for the Department of the Interior, Indian Service, as Junior Soil Surveyor.

Q. Were you on the Blackfeet Indian Reservation?

A. I was attached to the Blackfeet Indian Reservation from June 19, 1941, until December, 1941, at which time I went to Billings.

Q. Did you have occasion on August 13, 1941, to make an inspection in company with Eugene Barrett, of the Connolly horses on the Blackfeet Indian Reservation?

A. I did.

Q. What did you do. What did you determine Mr. Young, what did you see?

(Testimony of Darrell P. Young.)

A. On August 13, 1941, while in company with Mr. Barrett I counted thirty-two head of horses bearing a P. Y. brand on the left jaw on sections one, thirteen, township thirty-five north, range nine west.

Cross Examination

By Mr. McCabe:

Q. Did I understand you to say thirty-eight head or thirty-two head?

A. Thirty-two head. [180]

Q. And how long were you there at the time you made the examination of those horses?

A. Oh, approximately forty-five minutes to an hour.

Q. And were those horses all bunched there, or were they scattered throughout the sections?

A. We encountered the horses pretty well in a group, in a bunch you might say, in a band.

Q. Altogether, that is, did you each make separate counts? A. Yes.

Q. And after you counted them, did you compare your count with the other? A. Yes.

Q. And was there any variation at that time?

A. No variation. The horses were very easily identified, the brands on the jaw were very easily seen.

Q. And at that time did you see any other horses or cattle or livestock grazing on the same section eleven? A. No.

Q. Did you make any investigation to determine

(Testimony of Darrell P. Young.)

whether there were other horses grazing on that section?

A. No particular effort was made.

Q. What was that?

A. No particular effort was made to determine that.

Q. I understand that when you went to that section, and went out for the purpose of finding just as many Connolly horses on the land, on the section as you could, was that the purpose?

A. No, sir. [181]

Q. How does it come that you made an examination as to the Connolly horses, and did not make any examination as to the other livestock?

A. We counted the brands on the horses; in making the investigation we were not particularly making an investigation when we went there as to horses.

Q. But when you saw some horses with P. Y. brands on them, then you went ahead and examined all the horses with the P. Y. brand on the section?

A. Yes, that is right.

Q. But you had no particular purpose in doing that, had you. That is correct?

A. Yes, we had a purpose.

Q. What was that purpose?

A. Determining the livestock that were on the land, and the use that was made of the land, and the condition of the land, and at the time I might say that the Connolly horses had been encountered so many times in this section, that we took it upon ourselves to count those horses at that time.

(Testimony of Darrell P. Young.)

Q. You say the Connolly horses had been on there so many times. Did you see them there?

A. Yes, I saw them on there.

Q. You say you saw these horses on that area prior, or at prior times other than on August 13, 1941?

A. Yes.

Q. So that, the purpose of your visit out there on August 13, 1941, was to find out if any of the Connolly horses were on that land?

A. No, sir. [182]

Q. I just thought you said the reason you examined the Connolly horses was because they had been on there so much before, you wanted to find out about the horses?

The Court: No, he said he seen them so many times that this time he counted them. That is what I understand he intended to say.

Q. How many times before this had you seen the Connolly horses on that particular tract of land?

A. I don't recollect any specific number of times.

Q. By number of times, would you say two or three times?

A. I don't know how many times we might have encountered them on that particular land.

Redirect Examination

By Mr. Allan:

Q. Your work around this land on which you encountered the Connolly horses, was for the soil conservation at that time?

A. Yes, sir.

Q. Just because of the fact that you saw these

(Testimony of Darrell P. Young.)

horses there so often, you counted the horses on that particular occasion? A. Yes, sir.

Q. But your primary purpose was to determine the character of the soil, range conditions, and matters of that kind? A. Yes, sir. [183]

Recross Examination

By Mr. McCabe:

Q. Do you know where the Connolly Unit is on that area, Unit twelve?

A. At this time now, or at that time?

Q. At that time?

A. No, I didn't know the specific boundaries at the time.

Q. How did you identify these particular head of horses were upon section eleven, thirty-five range nine west. Did you go and look at the allotment pins?

A. That is right. We were making a survey. We kept track every quarter of a mile for our exact location, if it was possible to do so by allotment pins. We kept track every quarter to half mile where we encountered an allotment pin. We recorded them on that.

The Court: Q. You said you knew where the Blood allotments were? A. Yes, sir.

The Court: Q. How much did you cover, did you ride over them?

A. Yes, we rode over them on numerous occasions.

The Court: Q. On the numerous occasions that

(Testimony of Darrell P. Young.)

you were being questioned about, did you ride over the entire allotments? A. Yes, sir.

The Court: Q. Now, you have testified about those brands. Did you see other brands there around the Blood allotment at that time? [184]

A. No, sir, there was only one band of horses.

The Court: Q. Just one band of horses?

A. Yes, sir.

Whereupon a recess was had until two o'clock P. M.

Afternoon Session May 6, 1943.

Two o'clock

Mr. Allan: May it please the Court, I would like to recall Mr. Stephenson.

The Court: Very well.

Whereupon

ALBBERT E. STEPHENSON

was recalled as a witness on behalf of the Government, and testified as follows:

Direct Examination

By Mr. Allan:

Q. When I asked you this morning in the examination what the annual grazing costs for one horse during the year 1940 was on the Blackfeet Indian

(Testimony of Albert E. Stephenson.)

Reservation, I believe you said the annual figure was four dollars and fifty cents? A. Yes, sir.

Q. Was that correct?

A. The correct figure was five dollars and forty cents.

Q. Five dollars and forty cents is the correct figure? A. Yes.

Q. Now, on various occasions have you had occasion to check the Connolly Unit number twelve, the number of livestock grazing thereon?

A. Yes.

Q. And as you fixed it on January 27th, and January 28th, did you check that Unit for livestock grazing [185] thereon? A. Yes.

Q. How many livestock did you see on the Unit at that time?

A. No less than twenty-five head.

Q. That is the year 1942? A. Yes.

Q. Then again on January the 6th, 1942, did you check the Unit? A. January 16th.

Q. 1942. Did you check the Unit on that day?

A. Yes.

Q. How many livestock did you see on the Unit at that time grazing?

A. I didn't observe any of the cattle on the Unit at that time.

Q. Were there any horses on the Unit at that time? A. Yes.

Q. And approximately how many would you say? A. Approximately twenty-five head.

(Testimony of Albert E. Stephenson.)

Q. Then, referring to the year, 1941, in the month of October, upon the 21st of October, did you check the Unit for the number of cattle grazing thereon?

A. Yes, not less than thirty head at that time.

Q. Were those horses or cattle?

A. Cattle.

Q. Do you recall seeing any horses?

A. I don't recall seeing any horses at that time.

Q. According to your regulations in your Department, when a man removes livestock from one Unit to another [186] is a crossing permit issued?

A. Yes, it is supposed to be required.

Q. Was any crossing permit issued to Mr. Connolly to move cattle from one Unit to another?

A. No.

Q. This morning you testified that Mr. Connolly had Unit twelve? A. Yes.

Q. Approximately how many acres did that include?

A. Approximately twenty thousand acres in—

The Court: About five thousand acres in Unit twelve.

A. Approximately five thousand seven hundred acres.

Q. I believe you stated that he had other Units there, and there is one designated as one hundred and eighty-five? A. Yes, sir.

Q. About how many acres in that Unit?

A. You have the files there, Mr. Allan, three hundred and sixty.

(Testimony of Albert E. Stephenson.)

Q. I believe you testified as to deeded land that he had? A. Yes, sir.

Q. Is that a part of Unit one hundred and eighty-five at this time?

A. At the time that the action was filed it was not. It was adjacent to Unit number one hundred and eighty-five.

Q. At the present time it is part of the Unit one hundred and eighty-five? [187] A. Yes.

Q. And how many acres does it contain?

A. Approximately fourteen hundred and forty acres.

Q. And I believe, you also testified about having an interest in some other lands up there, that was designated as farm grazing lease? A. Yes.

Q. How many acres does that Unit contain, and what is the number?

A. One lease identified as F. G. three thirty-seven comprised of seven hundred and forty acres.

Q. At the time that this action was commenced, on November 22, 1941, did Mr. Connolly or his son have any other lands on the Blackfeet Indian Reservation to which they were entitled to the use and occupancy?

A. No, no other land at that time.

Q. Since the commencement of this action, I believe they have acquired additional land?

A. Yes.

Q. What was the date that they acquired these additional lands?

(Testimony of Albert E. Stephenson.)

A. Unit number one hundred and eighty-five S, comprising eight hundred and five acres at the effective date of May, 1942.

Q. Was there another farm grazing lease acquired at that same time? A. Yes.

Q. What is its designation, please?

A. F. G. 445.

Q. How many acres of land does this consist of?

[188]

A. Two hundred and forty acres of the effective date May 1, 1942.

Q. Were any crossing permits issued by your office for the Swanson cattle to Connolly's Unit?

A. None.

Q. Was there any crossing permit issued by your office to place cattle on Mr. Connolly's Unit?

A. None.

Cross Examination

By Mr. McCabe:

Q. Mr. Stephenson, with reference to these crossing permits, those crossing permits, what is the procedure in respect to handling them, and getting permission to cross?

A. The permission is asked for, and if everything is in order, why, the crossing permit is issued covering the period of time the crossing is to be made, route to be followed, and so forth.

Q. Do I understand that under your regulations, where Mr. Connolly, an Indian up there, is moving cattle from one Unit on which he has grazing rights to another Unit, or home ranch, or whatever it is,

(Testimony of Albert E. Stephenson.)

that he has to obtain on each occasion a crossing permit for every head moved?

A. That is right.

Q. And that he is not permitted to move any stock without such crossing permit?

A. That is right.

Q. Isn't it true that the so-called regulations of your office, have not been observed during the past [189] number of years; that you have permitted them to take their cattle across without any crossing permit?

A. They have been requiring it for some time now.

Q. For how long have they been requiring it?

A. For the last three or four years.

Q. In 1941 did you require that in all cases?

A. It is required, yes.

Q. And there was no exception to that at all?

A. There were some, the same as Mr. Connolly, that did not observe it, but it was required as a part of the contract itself that those crossing permits be obtained.

Q. And when a person came and had moved cattle and reported the fact that they had moved their cattle from one place to another allotment orally to your office, you didn't require a written permit to be issued, did you?

A. If the cattle were already moved, why, I would take it as a matter of record.

Q. And you approved it? A. Yes.

(Testimony of Albert E. Stephenson.)

Q. Now, you were talking about a water well in section ten, township thirty-four north, range nine west, this morning where, I believe you stated you saw nine head or thereabouts of Mr. Connolly's cattle around this well. Do you recall that testimony? A. Yes.

Q. Is that the well where the windmill is?

A. Yes.

Q. And isn't it a fact the windmill has been shut off [190] so that it would not bring water to the surface on that tract?

A. Shut off at the present time, yes.

Q. And wasn't it shut off at the time you were up there or did you examine it?

A. I didn't examine it at the time.

Q. Now, this morning you also testified that there was no such a provision or understanding with your office, in connection with grazing and farming leases whereby a person was entitled to increase the number of their livestock grazed proportionately, as they decreased the number of months they grazed the tract?

A. My testimony was in regard to Unit twelve, covered by a grazing permit.

Q. Covered by what?

A. My testimony was in regard to Unit twelve covered by the grazing permit.

Q. But in other permits it was the understanding and it was the practice of the office, that where a permit or a lease was issued for grazing for a period of months, stated period of months, for a

(Testimony of Albert E. Stephenson.)

stated number of livestock, that the permittee or lessee was privileged to increase his number of livestock proportionately as he decreased the number of months that he did not graze that particular land?

A. You would have to segregate permits and leases in that respect.

Q. Then as to leases there is such a practice in the office, is there not?

A. There is a provision in the lease, yes, sir.
[191]

Q. What was the total number of acres that you determined Mr. Connolly had grazing rights upon on the Blackfeet Reservation in 1941?

A. I didn't total them.

Q. You didn't total them?

A. No, I have not.

Q. Did you total the number of acres that he was entitled to graze upon in 1942?

A. No, I did not.

Q. And is that true of 1943?

A. 1943, I have totals on those.

Q. How much?

A. For the grazing season of 1943, I don't have the totals on those, the contracts are not completed for 1943, and I have not brought the totals up yet.

Q. I don't know that I understand you.

A. There are being new contracts issued for the year 1943. The contracts are not completed as yet, and I have not totaled those up.

(Testimony of Albert E. Stephenson.)

Q. So you have not totaled those up for 1943 either?

A. That is right.

Redirect Examination

By Mr. Allan:

Q. I think what Mr. McCabe had reference to, Mr. Stephenson, was the on and off privileges that are considered by the Indian Department with reference to grazing on the Blackfeet Indian Reservation.

A. We have those permits there.

Q. Did the lease provide for the on and off privileges?

A. Yes, sir. [192]

Q. Will you just explain how those on and off privileges work?

A. In a given area they have certain lands under which the contract payment is made to the office, and on other areas, other lands in the area the individual may own deeded land or allotted land, in order to regulate and establish the carrying capacity the entire area, the permit proper is issued for the land covered by the contract, and the payments made to the office for that, and on the other plan the carrying capacity is provided for in what we term on and off clause of the contract, so that we have in the contract the total number of stock to be grazed on the Unit, on both classes of land.

Q. Now, did Mr. Connolly take his cattle off of the Unit so as to entitle him to that on and off privilege?

A. Well, Unit twelve is not tied into the deeded land down on Willow Creek, where he takes his cattle in the fall of the year. The on and off clause

(Testimony of Albert E. Stephenson.)

covers only part within the bounds of Unit twelve.

Q. And he would have to take the cattle off of that to be entitled to have that privilege?

A. That is right.

Q. Did he do so?

A. He took his cattle down there in the winter of 1941 and 1942.

Q. And what would that entitled him to run in, in addition to Unit twelve?

A. Without crossing permit to know when the stock was taken to Unit twelve and also a crossing permit to [193] know when they were moved from the Unit to deeded land, we cannot determine what stock he should have because we don't know what period of time that the cattle were supposed to be on Unit twelve. That would be the controlling factor, is the length of time the stock was on the Unit. Without that information we could not allow for more than those cattle called for under the contract, because we don't know the difference in the period of time.

Q. Then, as I understand this on and off clause, or privilege, it is a matter of bookkeeping to work out the different Unit owners who have privileges?

A. That is right.

Q. And you had no information that would enable you to fix or adjust the proportion of this on and off privilege?

A. That is right.

Government rests.

DEFENDANTS CASE

Whereupon

BRIAN CONNOLLY,

a witness called and sworn on behalf of the defendants, testified as follows:

Direct Examination

By Mr. McCabe:

Q. Now, what is your name?

A. Brian Connolly.

Q. Where do you reside?

A. Well, my post office address is Blackfoot, I don't [194] reside there though.

Q. Mr. Connolly, have you any children?

A. Yes, sir.

Q. How many children have you. Just state their names and ages?

A. There is nine of them, but as far as the ages are concerned, I would have to look that up.

Q. Approximately, just the approximate ages?

A. The oldest one is Merle Connolly Shukap. She is married.

Q. I am referring to your unmarried son?

A. Well, this girl wasn't there anyway at the time.

Q. Well, tell us and the Court, the names of your unmarried sons and their approximate age?

A. That was there at the time?

Q. Yes?

A. Well, there is Dan Connolly.

The Court: His age?

(Testimony of Brian Connolly.)

A. I was just trying to figure it out. I think he was born in 1917; he would be about twenty-five, I imagine, and Eddie Connolly is next.

Q. How old is Eddie?

A. He was eighteen the 30th day of April.

Q. And how old is Victor?

A. There is Charlie that is next.

Q. All right, how old is Charlie?

A. He is about sixteen.

Q. And how old is Victor?

A. Victor is about thirteen.

Q. Going on fourteen? [195] A. Yes, sir.

Q. In the year 1941, how many head of cattle did you own?

A. Well, we left one kid out there yet.

Q. That is the younger boy? A. Yes.

Q. I don't care about it. Let us have it, what is the youngest boy's name?

A. His name is Martin.

Q. How old is he?

A. He is about eight years old.

Q. Now, during the year of 1941 how many head of cattle did you have of your own?

A. Well, I think it was around one hundred and thirty head, more or less.

Q. And how many head of cattle did Dan own, if you know?

A. Well, I don't think he had over one with his own brand on.

Q. How?

A. He didn't have over one, one cow.

(Testimony of Brian Connolly.)

Q. How many head of horses did you own in 1941?

A. Well, we didn't count them, but I don't think there was over one hundred head. I would rather think there was less.

Q. Would you say seventy-five head?

A. We would say there was at least seventy-five head.

Q. Did that include Daniel's horses?

A. Yes.

Q. That means the whole bunch owned by you and Dan? [196]

A. Yes, all of them.

Q. Now, are you familiar with the land which has been referred to in these proceedings here, range Unit number twelve, for which a permit was issued to you and Fred Choquette?

A. It is Frank Choquette.

Q. Are you acquainted with the location of that land?

A. Yes sir.

Q. Besides that land included in Unit twelve, have you any other land up there in that area?

A. Why, yes.

Q. And how many acres of land do you have in that area that you graze stock on, other than that embraced in Unit twelve. That is in 1941?

A. There was two hundred and eighty acres in thirty-five, eight, that ain't mentioned in any suit.

Q. Township thirty-five north, range eight west?

A. No, the section number.

Q. Then, did you have approximately a lease

(Testimony of Brian Connolly.)

on twelve hundred acres of land,—a lease on twelve hundred acres of deeded land from Kipp?

A. Not in twelve.

Q. No, beside what was in twelve?

A. There is twelve hundred acres of the children's land in number twelve.

Q. All in Unit number twelve is covered in this exhibit one, is it not, and by that you refer to the land owned by Daniel Connolly?

A. Yes, Merle Connolly, Nora Connolly.

A. So that altogether in Unit twelve you have as shown [197] by this exhibit, fifty-seven hundred sixty acres?

A. Yes, there is more land besides that.

Q. I mean in this Unit twelve. Is there more land besides that in Unit twelve?

A. Yes, there is, that you have not mentioned in there at all.

Q. How many acres is that?

A. I believe that you have got the list of all of it there.

Q. In 1i41 is this?

A. Yes sir. There is some of the leases that were drawn on the check; that was not mentioned on the lease, but paid by the check.

Q. You mean you paid for some land in Unit twelve by check? A. Yes, no lease on it.

Q. Who did you pay that to?

A. It is on the checks there.

Q. Do you remember who it was to?

A. It was to Clara Hanson.

(Testimony of Brian Connolly.)

Q. How many acres did you get from that?

A. Two hundred and eighty.

Q. You must have that check. We will go along and get that later on. Now, besides these five thousand seven hundred and sixty acres, as shown in this exhibit one, which is the Choquette and your permit, did you have an instrument purporting to lease such land or some land of Isabelle Kipp and Dora Kipp and Joseph Kipp? A. Yes sir.

Q. Showing you defendants exhibit three, state whether [198] you know whose signatures those are appearing on that lease of Joseph Kipp?

Mr. Allan: May I just ask a question or two about this?

The Court: Yes.

Mr. Allan: Q. Is this Indian land on the Reservation?

A. Yes sir.

Q. Was the lease approved by the Superintendent of the Reservation and recorded with the Superintendent? A. No, with his consent.

Q. Is it approved by him?

A. Approved by Wershing.

Q. Wershing was not Superintendent of the Reservation?

A. That don't matter. He gave us his consent.

Q. Is there anything on here to show the approval of the Superintendent?

A. No, we went and showed the Superintendent the rules and regulations where these fellows can

(Testimony of Brian Connolly.)

lease their own land, and they approved it under those conditions.

Mr. Allan: We object to this for the reason that it is not approved by the Superintendent.

Mr. McCabe: We have a letter.

The Court: The regulations require the approval of the Superintendent?

Mr. Allan: Yes.

Mr. McCabe: Q. Wasn't this patented land?

A. No sir.

Q. Was this patent in fee land?

A. No sir. [199]

Mr. McCabe: When this lease was executed, this defendants exhibit three, did you take the matter up with the Superintendent at the Agency?

A. I did.

Q. And did he say it was all right to go ahead and accept the lease? A. He did.

Mr. Allan: The best evidence would be the approval of the Superintendent on that lease because of the specific rules and regulations under which the Superintendent must act. There is nothing to show that it was approved by the Superintendent.

Mr. McCabe: The question in this case is a willful trespass upon certain lands, and we are going to show that we had the right to graze stock on a certain acreage, certain number of acres, and if in the course of grazing that stock, any of them strayed, and caught and turned back to the range, that belonged to us, would not constitute a trespass

(Testimony of Brian Connolly.)

upon Indian land or upon the land complained of. That is the purpose of this offer.

The Court: That question, willful or malicious trespass, if that is the language of the complaint, it was not such a lease as the regulations required. He talked to the Superintendent about that; he got the oral consent from the Superintendent to accept the lease from this person. It is not a valid lease under the regulations, nevertheless, it might go to that question of willful and deliberate trespass. I think that perhaps I will allow you to go into it [200] on that score for the time being anyway.

Q. And did Joseph Kipp whose name appears on there, sign that lease. Is that his signature appearing thereon? A. Yes sir.

Mr. McCabe: We now offer in evidence defendants proposed exhibit number three.

The Court: Is there anything on it anywhere to indicate the approval of anybody officially connected with the Reservation?

Mr. McCabe: Not endorsed on it, merely the oral statement of the witness; it was executed with the authorization of the Agent.

The Court: We will let it in subject to the objection.

Mr. Allan: We object to the proposed exhibit three in that the lease covers Indian land on the Blackfeet Indian Reservation, allotted land under the administration of the Indian Department, and there is absolutely nothing on the lease to show that it was ever approved by the Superintendent, or

(Testimony of Brian Connolly.)

any authorized Government Agency. Furthermore, the lease is not recorded with the Superintendent of the Agency as required to be.

The Court: Well, under those circumstances I doubt whether it should be considered. I will not pass on it at this moment. I will receive it subject to the objection of the United States Attorney. I may not consider it later on.

Whereupon defendants exhibit number three was [201] received in evidence, and is in words and figures as follows, to-wit:

DEFENDANTS EXHIBIT No. 3

This Agreement, made and entered into this 19th day of Feby. A. D. 1941, by and between Joseph Kipp #2 party of the first part, and Brian Connolly party of the second part, Witnesseth, that the said party of the first part for and in consideration of the rents and covenants hereinafter mentioned and to be paid and performed by the said party of the second part, has Demised, Leased and Let, and by these presents does Demise, Lease and Let unto the said party of the second part, the following described. . . .

NW and NE and SW of Sec 20, and the SW of NW Sec. 21 and NW and N $\frac{1}{2}$ SW Sec. 29 and NW of SE Sec 30 and NE Sec. 28 and W $\frac{1}{2}$ W $\frac{1}{2}$ Sec. 27 Township 34 N. Range 9 West, comprising 1120 acres of the allotments of Isabell Kipp, Elizabeth Kipp, Dora Kipp and Joseph Kipp #2.

(Testimony of Brian Connolly.)

To Have and to Hold, the above rented lands to the said party of the second part his heirs, executors, administrators and assigns for and during the full term of one year from and after the first day of May, 1941, for grazing privileges, with haying privilege reserved to the owners.

And the said party of the second part, for him his heirs, executors, administrators, and assigns agree to and with the said party of the first part, to pay his heirs, executors, administrators and assigns, as rent for the above mentioned grazing privileges, the sum of one [202] hundred sixty-eight Dollars, per year, half payment to be made in advance on signing the lease. The receipt of which payment is hereby acknowledged. \$84.00 paid on signing—\$84.00 to be paid Nov. 1, 1941, for and during the term of this lease.

And It Is Further Agreed, by and between the parties as follows: That should the said party of the second part, his heirs, executors, administrators or assigns, fail to make the above mentioned payments as herein specified or fail to fulfill any of the covenants herein contained, then and in that case it shall be lawful for the said party of the first part, his heirs, executors, administrators or assigns, to re-enter and take full and absolute possession of the above rented lands and hold and enjoy the same fully and absolutely, without such re-entering working a forfeiture of the rents to be paid and the covenants to be performed by the said party of the

(Testimony of Brian Connolly.)

second part, his heirs, executors, administrators or assigns, for the full term of this lease.

And the said party of the second part also covenants and agrees to and with the said party of the first part, not to sublet the above rented lands or any part thereof during the full term of this Lease, without first obtaining the consent of the said party of the first part, his heirs, executors, administrators or assigns, thereto, and that he will at the expiration of the time as herein recited, quietly yield and surrender the aforesaid rented lands to the said party of the first part, his heirs, executors, administrators or assigns, in as good condition and repair as when he took them, reasonable wear and tear [203] damages by the elements alone excepted.

In Testimony Whereof, both parties have hereunto set their hands and seals this 19th day of February, A. D. 1941,

[Seal] JOSEPH KIPP #2

[Seal] BRIAN CONNOLLY

State of Montana,
County of Glacier—ss.

On this 19th day of February in the year A. D. One Thousand Nine Hundred Forty-one, before me J. L. Sherburne, a Notary Public for the State of Montana, personally appeared Joseph Kipp #2 and Brian Connolly known to me (Or proved to me on oath of) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they each of them respectively, executed the same.

(Testimony of Brian Connolly.)

In Witness Whereof, I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

[Seal] J. L. SHERBURNE

Notary Public for the State of Montana Residing
at Browning

My Commission expires Nov. 15, 1943.

Q. Now, in 1941, in the year 1941, did you receive from the Indian Department a farming and grazing lease purporting to grant you rights to lands belonging to Willie Marie Kipp, deceased, and Alfreda Kipp? A. Yes, sir.

Q. Showing you the defendants proposed exhibit number four, state whether that is your signature appearing thereon? [204]

A. Yes, you bet.

Q. And is that the signature of Alfreda Kipp?

A. I don't know. They had to send it to her. I was not there.

Q. Was this lease handled by the Indian Department at Browning? A. Yes.

Q. And showing you the signature of James W. Cross, do you know whose signature that is?

A. Yes, that is Cross' signature.

Q. Is that the Clerk at Browning, at the Indian office? A. Yes.

Q. Down at the bottom, or endorsed on this you will note the endorsement, "Recommended for ap-

(Testimony of Brian Connolly.)

proval by D. A. Longenbaugh, Agricultural Extension Agent," do you observe that signature?

A. Yes, sir.

Q. And then this signature appearing thereon, F. H. McBride. Do you know whose signature that is?

A. That is the Superintendent of the Blackfeet Indian Reservation.

Mr. McCabe: We will now offer in evidence defendants exhibit number four.

Mr. Allan: This is the lease that Mr. Stephenson testified to as being in effect May, 1942. We have no objections.

The Court: It may be received in evidence.

Whereupon defendants exhibit number four was received in evidence and is in words and figures as follows, to-wit: [205]

DEFENDANTS EXHIBIT No. 4

5-180b

(April 1929)

United States

Department of the Interior

Office of Indian Affairs

Cont-1-5-Ind-8828

Write all names in full and be sure to give correct and full post office addresses.

Farming and Grazing Lease

Lease No. FG-445 Tribe Blackfeet. Allotment No. 3019.

This Contract, in quadruplicate, made and en-

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

tered into this 24th day of June, 1942, by and between the Indian or Indians named below (the Superintendent of the Indian Agency acting for and on behalf of minors, undetermined heirs, non-competents, and nonresidents), hereinafter called the "lessor,"

Aect. No.

Lessors	Year	Sex	Share	T. B.	Page	Amount
Born						

~~K-22~~ Willie Marie Kipp, dec.,

K-48 Alfreda Kipp All\$41.00

Total,

and Brian Connolly of Browning, State of Montana, Rural Route No. , , , , hereinafter called the "lessee," under and in accordance with the provisions of existing law and the regulations prescribed by the Secretary of the Interior relative to Farming and Grazing leases on restricted Indian lands, Witnesseth: That for and in consideration of the rents, covenants, and agreements hereinafter provided for, the lessor doth hereby let and least unto the lessee the land and premises described as follows, to-wit: E/2 SE/4 Sec. 28 and the SE/4 of Sec. 20, Twp. 34, R. 9 West, containing 240 acres, more or less, for the term of [206] one years, beginning on the first day of May 1, 1942, fully to be completed and ended on the 30th day of April, 1943, subject to the conditions hereinafter set forth. The lessee, in consideration of the foregoing, covenants and agrees to pay the officer in charge of the Indian

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

agency \$41.00 per annum for the use and benefit of the lessor, as rental for the land and premises, said sum to be paid in semiannual payments as stated below.

Date due	Amount	Improvements
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Upon approval of lease	\$41.00	
------------------------	---------	--

The lessee agrees to pay 15c an acre to graze the land and also agrees to pay an additional sum of \$5.00 for the hay stumpage. The lessee hereby agrees that he will not stock the above lands in excess of 24 acres for each cow and horse and 6 acres for each sheep or the equivalent thereof where the grazing season is less than twelve months.

1. Interest. It is understood and agreed by and between the parties hereto that if any installment of rental is not paid within thirty days after becoming due that interest at the rate of 6 per cent per annum will become due and payable from date rental became due and will run until said rental is paid.

2. Improvements to Be Placed,—It is expressly understood and agreed by and between the parties hereto, that the lessee will, at his own expense, within from the beginning of this lease, build, construct, and erect the following improvements upon the above described land:

.....
all of which are to be constructed in a substantial and [207] workmanlike manner and of durable material within the time limit specified above, or he

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)
shall be liable for the full value thereof, with a fifteen per cent penalty additional for improvements not made as above set forth.

3. Improvements Which May Be Removed.—It is further agreed by and between the parties hereto, that the lessee may place the following improvements on the land covered by this lease and remove same within thirty days after the termination of his occupancy; Provided, that he may not attach such improvements to any improvements already on the land or to permanent improvements to be hereafter constructed, in such a way that the removal thereof would in any way damage the improvements which must be left on the land.

4. Improvements Which May Not Be Removed.—It is further understood and agreed by and between the parties hereto that any and all improvements placed upon the leased premises not stipulated in this lease contract are to remain thereon at the expiration of the lease term and become the property of the lessor.

5. Insurance.—It is further understood and agreed by and between the parties hereto that the lessee is * * * to insure buildings now on the leased premises or hereafter placed thereon, which are in physical condition to insure, against loss by fire, lightning, windstrom and tornadoes in the full insurance value thereof, for the use and benefit of the lessor, in a company acceptable to the officer in

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

charge of the Agency, and will keep such insurance in force during the full term of this lease; the insurance money, in the event of loss, to be paid to [208] the said officer in charge, for the use and benefit of the lessor; provided, however, that the lessee may rebuild the improvements within ninety days after the loss to the satisfaction and acceptance of said officer in charge, and in such case receive the insurance money in reimbursement the expense incurred. The option of the less so to rebuild must be declared to said officer in charge within thirty days after the date of the loss; in the event that the lessee does not exercise the option hereunder, it is agreed that said improvements may be rebuilt therewith in the discretion of the said officer in charge. In event the buildings are in physical condition to insure but on account of their not being occupied no insurance company will write a policy, it is understood and agreed by and between the parties hereto that the lessee is to be responsible to the said officer in charge for the full value thereof, and that in event of loss he will pay to the said officer in charge the full amount of the damages, for the use and benefit of the lessor; provided, that said lessee may rebuild or repair the destroyed or damaged buildings under the same conditions as hereinbefore provided for destroyed or damaged buildings which had been insured. It is further understood and agreed by and between the parties hereto, that the lessee must within fif-

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

teen days after the beginning of this lease file with the officer in charge of the Agency, a proper insurance policy or a statement by some reputable insurance agent that the buildings are not in physical condition to insure; and it is further understood and agreed by and between the parties hereto that the failure of the lessee to file [209] said policy or statement will forever bar him from claiming that the buildings are not in physical condition to insure and will render him liable to the said officer in charge, for the use and benefit of the lessor, for the full amount of any loss, of or to said buildings. It is further understood by and between the parties hereto that in the event of the loss or damage of any buildings which have not been insured and for which the lessee has not filed the above indicated statement that said buildings were not in physical condition to insure, that the officer in charge of the Indian Agency is to appraise the amount of the loss and his appraisal is to be accepted as the true amount of the damage which the lessee is to pay. Where the word "not" is inserted in the first line of this paragraph this clause does not apply.

6. Repairs.—It is understood and agreed by and between the parties hereto that the lessee is to keep the premises covered by this lease in good repair and the said lessee will be responsible for all damages done to buildings and fences and other improvements, except the usual wear and decay.

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

7. Manner of Cultivation, Noxious Weeds, Johnson Grass, Etc.—It is understood and agreed by and between the parties hereto that the lessee is to cultivate, improve, and farm the lands covered by this lease in a husbandlike manner to the best advantage; that he is to commit no waste thereon; that he is to keep said lands free from noxious weeds; and that he is to keep down all Johnson grass that may appear on the leased premises during the term of this lease and to use diligence in an effort to [210] destroy same.

8. Crop Leases.—It is understood and agreed by and between the parties hereto that the lessee will not purchase or be a party to the purchase by anyone, of the lessor's share of the crop, prior to its delivery as hereinbefore provided, and that should he purchase the crops after that time, he will pay the regular commercial price in effect on date of such purchase; that the lessor will not mortgage or otherwise encumber or dispose of his share of the crop prior to its delivery by the lessee as hereinbefore provided for; and that the lessee will harvest crops as soon as possible after maturity in order that the lessor may pasture the land or sow it to wheat. It is further understood and agreed by and between the parties hereto that a strictly crop lease gives the lessee no rights whatsoever in or to any land not cultivated; in or to any pasture on the land; building on the premises; unless specifically stated.

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

It is further agreed and understood that the shares in a crop rental shall be as follows: One-fourth of cotton when hand picked, one-third for snapped picked cotton, and two-fifths for sledded cotton, for the lessor's share. All cotton to be delivered at the gin, and money representing the lessor's part to be paid to the disbursing officer. If the lessor, or lessors, fail to receive the lessor's part of grain at the threshing machine, the lessee may market such grain and have a fair allowance for hauling such grain from the machine to market, all weights and bills to be presented to the farmer or agency officer for final settlement. This [211] division of crops and the handling of same shall govern unless otherwise specified in paragraph No. 2.

9. Stalk Fields.—It is understood and agreed by and between the parties hereto, that stalk fields upon the leased premises shall not be sold unless the same will be consumed without injury to the land and prior to the expiration of this lease; and that no cattle or other stock are to be placed upon the stalk fields in wet weather and that the lessee and his sureties shall be liable to the United States, for the use and benefit of the lessor, for any and all damages resulting to the land in violation of this provision of the lease contract. (This paragraph does not apply to ordinary crop leases as, under paragraph 7 above, the lessee has no rights to such stalk fields.)

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

10. Overpasturing—Stock Laws — Fertilizers.—
It is understood and agreed by and between the parties hereto that the lessee will not pasture on the leased premises an unreasonable number of animals for the grass and pasture afforded; that he will observe all quarantine and other stock laws and regulations now in force or hereafter promulgated by the United States or the State authorities; and that all manure and other fertilizer which may be produced upon the leased premises shall be the property of the lessor and shall be distributed upon the leased lands.

10A. Terracing.—It is understood and agreed by and between the parties hereto that the lessee will terrace and keep up the terrace on.....acres of land covered by this lease at the estimated cost of \$.....; and it [212] is further understood and agreed that the lessee shall do the terracing in accordance with the methods used by the State Agricultural College of the State in which the land covered by this lease is located. In Oklahoma Revised Circular No. 218, Series 56, 1928, the subsequent instructions issued by the Cooperative Extension Work in the Oklahoma Agricultural and Mechanical College, located at Stillwater, Okla., shall be followed.

11. Subleasing—Illegal Assignments—Transfers.—It is understood and agreed by and between the parties hereto, that any sublease, assignment, or

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

transfer of this lease or of any interest therein can lawfully be made only with the consent of the lessor in writing and the approval of the representative of the U. S. Government by whom this lease is approved, or his successor in office, and that any assignment, sublease or transfer made or attempted without such consent and approval shall be void and render this contract subject to cancellation by such officer. It is further understood and agreed by and between the parties hereto that the lessee hereto will be guilty of unlawful subleasing if he contracts, without the consent of the lessor, and the approval of the officer in charge of the Indian agency, in writing, with any other person or persons to farm or use the premises or any part thereof, on any other basis than the payment by said lessee of so much money per hour, per day, per week, per month, or per job. It is further understood and agreed by and between the parties hereto that all share cropping or releasing for cash, all or any part of the premises, by the lessee herein, without the consent in writing of the lessor and [213] the written approval of the officer in charge of the Indian agency, except as provided in paragraph numbered 8, hereinbefore, is unlawful subleasing and renders this lease subject to cancellation by said officer in charge of the Indian agency.

12. Timber.—It is understood and agreed by and between the parties hereto that the lessee herein may utilize as fire wood, for his own use only, such

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

dead and down timber as there may be on the leased premises which is not required by the lessor for his own, individual use; that no green timber may be cut by either the lessor or lessee without written consent of the officer in charge of the Indian agency, except, that the lessee may cut posts for repairing fences on the leased premises only. (See paragraph 13 prohibiting the lessee cutting posts where a cash allowance is made in the lease contract).

13. Posts.—Where a cash consideration is allowed for posts, it is understood and agreed by and between the parties hereto that metal, yellow pine, bois d'arc, post oak, or white oak posts are to be furnished unless otherwise stipulated in paragraph No. 2. The kind of posts to be furnished is to be stated in the blank space in paragraph No. 2 and if it be either of the five kinds named in this paragraph, the specifications are to be as follows: Metal posts must be steel line posts, 6 feet in height, weight not less than $8\frac{1}{2}$ pounds finished with a heavy coat of special steel paint, to be set in the ground two feet and no more than 20 feet apart, corner and gate posts well braced, must be not less than $7\frac{1}{2}$ feet in length, weight not less than 20 pounds, gauge [214] No. 8, and must be set in the ground $3\frac{1}{2}$ feet. Bois de' arc No. 1 select, white oak No. 1 select, post oak No. 1 select or Southern Yellow pine to be 6 to $6\frac{1}{2}$ feet in length and 4 to 5 inches in diameter at the top, placed not less than 2 feet in the ground, set in a

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)
true line, well tamped, not farther than 20 feet apart, corner and gate posts are to be 8 feet in length, not less than 8 inches in diameter at the top, placed $3\frac{1}{2}$ feet in the ground, fence to be well braced at the corners and gates. The Southern Yellow Pine posts must be pressure treated with No. 1 grade English cresote oil. (Where a money consideration is allowed, and where other than either of the five kinds of posts named in this paragraph are agreed upon, such posts must be stipulated in writing in paragraph No. 2 with special specifications required to fulfill the contract.)

14. Nuts and Fruits.—It is understood and agreed by and between the parties hereto that the lessor reserves all uncultivated nuts such as pecans, walnuts, etc., berries and other wild fruits, except a reasonable amount for the personal use of the lessee and his immediate family unless otherwise provided in the lease.

15. Prairie Dogs.—It is understood and agreed by and between the parties hereto that the lessee herein must kill all prairie dogs on the leased premises within six months after the beginning of this lease and must thereafter, during the term of this lease, keep the premises free from prairie dogs. It is further agreed by and between the parties hereto, that failure on the part of said lessee to comply with requirement relative to [215] killing prairie dogs shall render this lease subject to cancellation and the lessee hereto liable for liquidated damages

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

in the amount of \$50. in the option of the officer in charge of the Indian agency.

16. Business Leases.—It is understood and agreed by and between the parties hereto that the lessor reserves the right to make a business lease on the premises covered by this lease and that in event such a lease is made, the lessee hereunder shall be entitled to actual damages sustained by him on account of said business lease, and to nothing more. It is further understood that in the event a dispute between the lessee hereunder and the lessee under the business lease as to the amount of such actual damages the matter will be referred to the officer in charge of the Indian agency, who shall be the sole and final judge as to the amount of the said damages.

17. Introduction and Manufacture of Intoxicants—Unlawful Conduct.—It is understood and agreed by and between the parties hereto that the lessee will not use or permit the premises covered by this lease to be used for any unlawful conduct or purpose whatsoever; that he will not use or permit the use of the leased premises, or any part thereof, for the manufacture, sale, gift, or storage of any intoxicating liquors or beverages and that he will not permit the introduction of same into or upon the leased premises, and that any violation of this provision by the lessee, or with his knowledge, shall render this lease subject to cancellation by the officer in charge of the Indian reservation.

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

18. Delinquencies.—It is understood and agreed by and [216] between the parties hereto that if the lessee hereto shall fail to pay the rents when due, or to construct or place the improvements on said land as contracted for and in the manner herein provided, or shall fail to comply with or shall violate any of the provisions of this contract, the lessor, or the officer in charge of the Indian reservation, may declare the lease forfeited by giving notice as required by law, and may thereupon re-enter and take possession of the leased premises, and eject the lessee therefrom, and this lease shall thereupon be subject to cancellation by the officer in charge of the Indian reservation but such forfeiture shall not release the lessee from paying all rents contracted for or from damages for such failure or violation; and it is further understood and agreed that there shall be a lien upon all crops grown or raised upon the leased premises as a security for the payment of the rents and the making of the improvements provided for herein.

19. Delivery of Premises.—It is understood and agreed by and between the parties hereto that at the expiration of the time mentioned in this lease the lessee shall peaceably and without legal process deliver up the possession of the premises herein described in as good condition as they now are, usual wear and unavoidable accidents excepted.

20. Upon Whom Binding.—It is understood and agreed, by and between the parties hereto that the

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, executors, and administrators of the parties to this lease.

21. Must Be Approved.—It is understood and agreed by and [217] between the parties hereto that this lease shall be valid and binding only after approval by the officer in charge of the Blackfeet Indian Agency.

22. Surrender Clause Permitting Seeding Fall Small Grain.—It is understood and agreed that the lessee will surrender, without cost, the stubble land and other land in suitable condition on which he has no growing crop, to be seeded to fall grain or alfalfa five months prior to the expiration of the lease, when the lease expires at the close of the calendar year; or, prior to the expiration of the year when the lease expires on or before April 1st of the following calendar year.

23. Interest of Member of Congress.—No member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this provision shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

In Witness Whereof, the lessee and lessor have hereunto affixed their hands and seals, the day and year first above written.

BRIAN CONNOLLY,

Lessee

ALFREDA KIPP,

Lessor

Alfreda Kipp,

Lessor

Two witnesses to each signature:

Jas. W. Cross

P. O. Browning, Montana

Josie Adams

P. O. Browning, Montana

Mrs. Lorraine Munroe

P. O. 2218 - 10th St., Anacortes, Wn.

Mrs. L. M. Foster

P. O. 1320 - 10th St. Anacortes, Wn. [218]

State of Montana,

County of Glacier—ss.

On this 28th day of July, 1942, personally appeared before me Jas. W. Cross, Clerk, the above mentioned Brian Connolly and acknowledged the signing and sealing of the above indenture of lease to be their free act and deed.

I Hereby Certify that the contents, purport and effect of the lease were explained to and fully understood by the lessor, and that said lease was signed and sealed in my presence, and to the best

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

of my knowledge and belief is in every respect free from fraud or deception, and that I am in no respect interested in said lease.

JAS. W. CROSS

Clerk

BOND

In consideration of the letting of the premises described in the foregoing indenture of lease, and of the sum of one dollar to each of us in hand paid, the receipt whereof is hereby acknowledged, we, the undersigned, of Rural Route No..... County,and.....of Rural Route No..... County,..... hereby become sureties for the punctual payment of all rents and performance of all the covenants and agreements in the above indenture of lease, to be paid and performed by..... the lessee named therein, and if any default shall be made therein we do hereby promise and agree to pay on demand unto the above-named officer such sum or sums of money as will be sufficient to make up such deficiency, with a 15 per cent penalty additional for improvements not made, and fully satisfy all the conditions, covenants, [219] and agreements contained in said indenture of lease without requiring any notice of nonpayment or proof of demand being made. It is agreed that this bond shall be liable for material furnished under the contract provided such material is of the kind and

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)
 quality called for under this contract. We we do
 hereby bind ourselves, our heirs, executors, and
 administrators, jointly and severally, firmly by
 these presents.

Signed and sealed this.....day of....., 19....
 Witnesses:

.....(Seal)
(Seal)

VERIFICATION OF SURETIES

State of....., County of.....—ss.

.....and....., the sureties to the fore-
 going indenture of lease, being duly sworn and
 severally examined by me, state that they signed
 the foregoing obligation as the sureties for the lessee
 under the annexed lease, and that they and each
 of them, respectively, own and possess property
 over and above all debts, liabilities, and legal ex-
 emptions of the value and worth the sum placed
 opposite their names.

..... \$.
 \$.

Subscribed and sworn to before me, at.....,
 this.....day of....., 19...

.....

Notary Public

My Commission expires..... [220]

(Testimony of Brian Connolly.)

Defendants' Exhibit No. 4—(Continued)

Recommended for approval.

DEPARTMENT OF THE IN-
TERIOR, United States Indian
Service, July 31, 1942.

D. A. LONGENBAUGH

Agric. Exten. Agent

The within lease is hereby approved and declared to be made in accordance with the law and the rules and regulations prescribed by the Secretary of the Interior thereunder, and now in force.

F. H. McBRIDE

United States Indian Super-
intendent.

Q. Showing you defendants proposed exhibit number five, state whether you received that from the Indian Office at Browning, Montana?

A. Yes.

Q. And did you receive it about the date, the 1st of May 1940, approximately at that time?

A. Somewhere close to it.

Q. Yes, around that time? A. Yes.

Q. Showing you the signature appearing thereon under date of June 29, 1940, C. L. Graves, do you know whose signature that is?

A. He was Superintendent at that time.

Q. He was then Superintendent of the Black-foot Indian Reservation at the time of this lease?

(Testimony of Brian Connolly.)

A. Yes.

Mr. Allan: No objections.

The Court: It may be received.

Whereupon defendants exhibit number five was received in evidence and is in words and figures as follows: [221]

DEFENDANTS EXHIBIT No. 5

5-180b

(April, 1929)

Department of The Interior

Office of Indian Affairs

Cont-1-5-8390

Write All Names in Full and be Sure to Give Correct and Full Post Office Addresses.

Farming and Grazing Lease

1561

Lease No. FG-337 Tribe Glackfeet. Allotment No. 1556

This Contract, in quadruplicate, made and entered into this 1st day of May, 1940, by and between the Indian or Indians named below (the Superintendent of the Indian Agency acting for and on behalf of minors, undetermined heirs, noncompetents, and nonresidents), hereinafter called the "lessor".

Acct. No.	Lessors.	Year Born.	Sex.	Share T.B.	Amount
					Page

See attached schedule rider

Total

(Testimony of Brian Connolly.)

and Brian Connolly of Browning, State of Montana, Rural Route No..... hereinafter called the "lessee," under and in accordance with the provisions of existing law and the regulations prescribed by the Secretary of the Interior relative to Farming and Grazing leases on restricted Indian lands, Witnesseth: That for and in consideration of the rents, covenants, and agreements hereinafter provided for, the lessor doth hereby let and lease unto the lessee the land and premises described as follows, to wit: See schedule, of Sec., Twp. 34, R. 9 West, containing 470.00 acres more or less, for the term of 3 years, beginning on the first day of May, 1940, fully to be completed and ended on the 30 day of [222] April, 1943, subject to the conditions hereinafter set forth. The lessee, in consideration of the foregoing, covenants and agrees to pay the officer in charge of the Indian agency \$70.00 per annum for the use and benefit of the lessor, as rental for the land and premises, said sum to be paid in semiannual payments as stated below:

Date Due	Amount
May 1, 1940	35.25
Nov. 1, 1940	35.25
May 1, 1941	35.25
Nov. 1, 1941	35.25
May 1, 1942	35.25
Nov. 1, 1942	35.25

: I or we hereby agree that we will not stock the above lands in excess of 24 acres per head per year

(Testimony of Brian Connolly.)

for horses or cattle and 6 acres per head per year for sheep, or the equivalent thereof where the grazing season is less than 12 months per year.

10. Overpasturing—Stock Laws—Fertilizers.—It is understood and agreed by and between the parties hereto that the lessee will not pasture on the leased premises an unreasonable number of animals for the grass and pasture afforded; that he will observe all quarantine and other stock laws and regulations now in force of hereafter promulgated by the United States or the State authorities; and that all manure and other fertilizer which may be produced upon the leased premises shall be the property of the lessor and shall be distributed upon the leased lands.

11. Subleasing—Illegal Assignments—Transfers. It is understood and agreed by and between the parties hereto that any sublease, assignment, or transfer of this lease or of any interest therein can lawfully be made only, with the consent of the lessor in writing and the approval [223] of the representative of the U. S. Government by whom this lease is approved, or his successor in office, and that any assignment, sublease, or transfer made or attempted without such consent and approval shall be void and render this contract subject to cancellation by such officer. It is further understood and agreed by and between the parties hereto that the lessee hereto will be guilty of unlawful subleasing if he contracts, without the consent of the lessor, and the

(Testimony of Brian Connolly.)

approval of the officer in charge of the Indian agency, in writing with any other person or persons to farm or use the premises, or any part thereof, on any other basis than the payment by said lessee of so much money per hour, per day, per week, per month, or per job. It is further understood and agreed by and between the parties hereto that all share cropping or releasing for cash, all or any part of the premises, by the lessee herein, without the consent in writing of the lessor and the written approval of the officer in charge of the Indian agency, except as provided in paragraph numbered 8, hereinbefore unlawful subleasing and renders this lease subject to cancellation by said officer in charge of the Indian agency.

17. Introduction and Manufacture of Intoxicants—Unlawful Conduct.—It is understood and agreed by and between the parties hereto that the lessee will not use or permit the premises covered by this lease to be used for any unlawful conduct or purpose whatsoever; that he will not use or permit the use of the leased premises, or any part thereof, for the manufacture, sale, gift, or storage of [224] any intoxicating liquors or beverages and that he will not permit the introduction of same into or upon the leased premises; and, that any violation of this provision by the lessee, or with his knowledge, shall render this lease subject to cancellation by the officer in charge of the Indian reservation.

18. Delinquencies.—It is understood and agreed by and between the parties hereto that if the lessee

(Testimony of Brian Connolly.)

hereto shall fail to pay the rents when due, or to construct or place the improvements on said land as contracted for and in the manner herein provided, or shall fail to comply with or shall violate any of the provisions of this contract, the lessor, or the officer in charge of the Indian reservation, may declare the lease forfeited by giving notice as required by law, and may thereupon re-enter and take possession of the leased premises, and eject the lessee therefrom, and this lease shall thereupon be subject to cancellation by the officer in charge of the Indian reservation, but such forfeiture shall not release the lessee from paying all rents contracted for or from damages for such failure or violation; and it is further understood and agreed that there shall be a lien upon all crops grown or raised upon the leased premises as a security for the payment of the rents and the making of the improvements provided for herein.

19. Delivery of Premises.—It is understood and agreed by and between the parties hereto that at the expiration of the time mentioned in this lease the lessee shall peaceably and without legal process, deliver up the possession of the premises herein described in as good [225]

20. Upon Whom Binding.—It is understood and agreed by and between the parties hereto, that the covenants and agreements hereinbefore mentioned shall extend to and be binding upon the heirs, assigns, executors, and administrators of the parties to this lease.

(Testimony of Brian Connolly.)

21. Must Be Approved.—It is understood and agreed by and between the parties hereto that this lease shall be valid and binding only after approval by the officer in charge of the Indian Agency.

In Witness Whereof, the lessee and lessor have hereunto affixed their hands and seals, the day and year first above written.

BRIAN CONNOLLY

Lessee

JOHN SANDERVILLE

Lessee

JUDITH SANDERVILLE

Lessor

LEONA SANDERVILLE

Lessor

Two witnesses to each signature:

JAS. W. CROSS

P. O. Browning, Montana

LIANA LOHR

P. O. Browning, Montana

State of Montana,
County of Glacier—ss.

On this 26th day of June, 1940, personally appeared before me Jas. W. Cross, Clerk, the above-mentioned Brian Connolly and acknowledged the signing and sealing of the above indenture of lease to be their free act and deed.

I hereby Certify that the contents, purport and

(Testimony of Brian Connolly.)

effect of the lease were explained to and fully understood by the lessor, and that said lease was signed and sealed in my presence, and to the best of my knowledge and belief is in every respect free from fraud or deception, and [226] that I am in no respect interested in said lease.

JAS. W. CROSS

Clerk

BOND

In consideration of the letting of the premises described in the foregoing indenture of lease, and of the sum of one dollar to each of us in hand paid, the receipt whereof is hereby acknowledged, we, the undersigned of Rural Route No..... County, and, of Rural Route No..... County....., hereby become sureties for the punctual payment of all rents and performance of all the covenants and agreements in the above indenture of lease, to be paid and performed by...., the lessee named therein, and if any default shall be made therein we do hereby promise and agree to pay on demand unto the above-named officer such sum or sums of money as will be sufficient to make up such deficiency, with a 15 per cent penalty additional for improvements not made, and fully satisfy all the conditions, covenants, and agreements contained in said indenture of lease without requiring any notice of nonpayment or proof of demand being made. It is agreed that this bond shall be

(Testimony of Brian Connolly.)

liable for material furnished under the contract provided such material is of the kind and quality called for under this contract. And we do hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed and sealed this.....day of, 19...

Witnesses:

..... (Seal)

..... (Seal)

[227]

VERIFICATION OF SURETIES

State of....., County of.....—ss.

.....and....., the sureties to the foregoing indenture of lease, being duly sworn and severally examined by me, state that they signed the foregoing obligations as the sureties for the lessee under the annexed lease, and that they and each of them, respectively, own and possess property over and above all debts, liabilities, and legal exemptions of the value and worth the sum placed opposite their names.

..... \$......

..... \$......

Subscribed and sworn to before me, at.....
this.....day of....., 19....

.....

Notary Public

My Commission expires.....

(Testimony of Brian Connolly.)

Recommended for approval

DEPARTMENT OF THE IN-
TERIOR, United States Indian
Service, June 29, 1940
D. A. LONGENBAUGH
Agric. Exten. Agent

The within lease is hereby approved and declared to be made in accordance with the law and the rules and regulations prescribed by the Secretary of the Interior thereunder, and now in force.

C. L. GRAVES

United States Indian Super-
intendent

The undersigned allottees and heirs hereby lease the land described hereon to Brian Connolly for a period of three years beginning May 1, 1940 and ending April 30, 1943, at the rate of fifteen cents per acre. This lease is for grazing. [228]

Allotment 1561 Sadie Kipp, SW/4 Sec. 21; W/2 SE/4 Sec. 28; W/2 NE/4 Sec. 33; Township 34 Range 9 320.00 acres—\$48.00

Heirs are

S-398 John Sanderville 1/3 s/g John Sanderville
S-274 Leona Sanderville 1/3 s/g Leona Sanderville
S-275 Judith Sanderville 1/3 s/g Judith Sanderville
Allotment 1556, Calfwoman Kipp, NE/4 SW/4,
NE/4 SE/4 SW/4, N/2 SE/4 SE/4 SW/4,
N/2 S/2 SE/4 SE/4 SW/4 Sec. 28; Township
34 Range 9 57.50 acres—\$8.63

Judith Sanderville heir by partition.

(Testimony of Brian Connolly.)

S-275 Judith Sanderville

s/g Judith Sanderville

Allotment 1556 Calfwoman Kipp, S/2 S/2 SE/4
SE/4 Sec. 28; E/2 E/2 NE/4 NW/4, S/2 NW/4
Sec. 33; Township 34 Range 9 92.50 acres—
\$13.87

Leona Sanderville heir by partition.

S-274 Leona Sanderville

s/g Leona Sanderville

—————

Q. Mr. Connolly, in addition to the leases concerning which you have testified, did you have two other grazing permits upon the Indian Reservation? A. Yes sir.

Q. Showing you defendants proposed exhibit number six, state if that instrument was delivered to you by the Indian Agency Office at Browning, Montana. I believe this is a duplication of that. That is a duplication, we will withdraw defendants six. That is a duplication of exhibit one. We will withdraw six.

Q. Showing you defendants proposed exhibit number seven, state if that document was delivered to you by the Indian Agency Office at Browning, Montana? [229] A. Yes.

Q. And the signature appearing thereon as Brian Connolly, is that your signature?

A. Yes.

(Testimony of Brian Connolly.)

Q. And the signature Thomas L. Carter, Regional Forester, is Mr. Carter's signature?

A. I believe it is.

Mr. Allan: No objection.

The Court: Offered and received without objection.

Whereupon Defendants exhibit number seven was received in evidence without objection, and is in words and figures as follows, to-wit:

DEFENDANTS EXHIBIT No. 7

Range Unit #185-S

United States

Department of the Interior

Office of Indian Affairs

Grazing Permit

Permit fee \$2.50

(Write all names in full)

U. S. Indian Service. Forestry & Grazing. Received May 2 1942

Blackfeet Indian Agency Browning, Montana

By authority of law and under regulations prescribed by the Secretary of the Interior, Brian Connolly, or Browning Montana, is hereby granted permission to hold and graze livestock on the Blackfeet Indian Reservation for a period beginning May 1, 1942, and terminating not later than April 30, 1943, on the range unit usually known or described as follows: Range Unit No. 185-S com-

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

prising 805.00 acres of Indian land as per schedule attached, including all unreserved tribal land as authorized by Blackfeet Tribe and all unfenced Indian [230] allotments on which authority to grant grazing privileges have been secured, and covering livestock in kind and numbers, for the grazing period, and at the rate per head as shown in the following schedule, subject to the payment of all fees and full compliance with the attached range control stipulations which are made a part of this permit: [231]

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

Year	Number of Head	Kind of Stock	Grazing Period		Rate per Head	Amount	Payable One-half One-half
1942	33	Cattle	From— 5/1/42	To— 4/30/43	\$3.66	\$120.75	in full on approval

Unless authorized by the Superintendent of the Blackfeet Indian Reservation in writing, only livestock bearing the brands and marks herein shown shall be grazed under authority of this permit:

Cattle Branded R	L	Ear Marks R	L	Horse Brands R	L	Sheep Branded Wool Brand	Ear Mark R	L
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(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

This permit is issued with the understanding that head of will be grazed on this range, percent of which is Indian land and percent privately owned or leased range, evidence of the right to the use of which is recorded with (Delete)

It is further understood and agreed that if the permittee allows a greater number of livestock than the total number herein stipulated to graze upon this range unit of which the Indian range is a part, during the period this permit is in effect, this on-and-off clause shall immediately become null and void and the stock in excess of the number upon which fees are paid to the Indians shall be considered as in a state of trespass and treated accordingly.

In consideration of the above privileges the permittee agrees to pay to the Superintendent of the Blackfeet Indian Reservation for the use and benefit of the Indians entitled to occupy the lands above described, the sum of money found to be due from the permittee according to the provisions of this permit (calves, colts and lambs under 6 months of age not to be counted), and he further agrees to pay the grazing fees annually in advance. Unless the grazing fees shall be paid in advance for the full term of the permit, these payments will be guaranteed by an acceptable corporate surety bond in a penal sum of not less than the total amount due in any 1 year under the terms of the permit, namely,

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

one hundred twenty and 75/100 (\$120.75) (with a maximum limit of \$25,000), or by a bond for the same amount with at least four individual sureties who shall each qualify [223] in an amount equal to twice the amount of the bond, or by depositing a cash bond with the Superintendent of the Black-foot Indian Reservation equal to one-half of the annual grazing fees; said cash deposit to be credited on the last installment due on the permit, provided the terms of the permit have been faithfully carried out by the permittee.

It is understood and agreed by the permittee that this instrument is not a lease and is not to be taken or construed as granting any leasehold interest in or to the land described herein, but that it is a permit terminable and revocable in the discretion of the approving and concurring officers, and in any event not to extend beyond April 30, 1943.

It is also understood and agreed that any part of the area covered by this permit may be excluded from this range unit by the approving and concurring officers in the exercise of their discretion, by the transfer of title through sale of allotted land, or by the extinguishment of the Indian right of occupancy of the lands; and thereupon this permit shall cease and determine as to the parts of the range unit thus eliminated, the number of stock stipulated shall be reduced in conformity thereto, and the payments due hereunder shall be adjusted accordingly, provided that the termination of the permit has not been due to the fault of the permittee or

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

to a violation of the terms of this permit by or on behalf of the permittee.

The permittee hereby agrees that he and his employees will not use any part of the range unit for [234] the sale, manufacture, storage, or drinking of intoxicants or the handling of narcotics, and neither he nor his employees will take part in immorality or any illegal practices whatever in or upon the reservation. Violation of this clause will be deemed sufficient ground for cancelation of the permit.

All livestock grazed under this permit and all other property used in connection with the permit shall be held as security for the payment of any grazing fees due and for the full performance of the agreement, and all payments due hereunder shall constitute a prior and first lien upon said livestock and other property incidental to the enjoyment of the privileges granted. The Agency office contains public records of the United States pertaining to trust Indian allotments and all persons are charged with notice and knowledge thereof. A copy of each permit must be filed promptly in the Agency office. Such copy shall be available at all times for public inspection. If the permittee so desires he may file or record a copy of the permit, at his own expense, in the proper county office.

This permit shall not be assigned, sublet, or transferred without the written consent of the sureties and the approving and concurring officers.

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

The Superintendent and the Regional Forester shall make decisions relative to the interpretation of the terms of the permit and the range control stipulations which are attached hereto, and the terms of the permit cannot be varied in any detail except as herein provided without the written approval of the surety, the permittee, and [235] the issuing officers.

Done at the Blackfeet Indian Agency, this 17th day of March, 1942.

(Stamped)

(Signed) ROY NASH [Seal]

Superintendent

Concurred in May 2 1942

THOMAS L. CARTER

Regional Forester

I accept the permit with the foregoing conditions and the attached range control stipulations.

[Seal]

BRIAN CONNOLLY

Permittee [236]

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

No.	Allottee	Description	Unit No. 185-S			
			S	T	R	Acreage Amount
2751	John Harold Brown	N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$,	21	33	9	120.00 \$18.00
1587	William Cobell #1	SW $\frac{1}{4}$ SE $\frac{1}{4}$,	16			40.00 6.00
1979	Ora Cobell	NW $\frac{1}{4}$ SE $\frac{1}{4}$	16			40.00 6.00
1983	Walter McGowan	SE $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$	16			40.00 6.00
1980	Jeanette McGowan	SE $\frac{1}{4}$ SE $\frac{1}{4}$	16			40.00 6.00
2822	Ferdinand Cobell	SW $\frac{1}{4}$ SW $\frac{1}{4}$	15			40.00 6.00
3371	Minnie Tabor	NE $\frac{1}{4}$ SW $\frac{1}{4}$	15			40.00 6.00
2823	Leslie Cobell	SE $\frac{1}{4}$ SW $\frac{1}{4}$	15			40.00 6.00
2261	Frank Bostwick	NW $\frac{1}{4}$ SE $\frac{1}{4}$	15			40.00 6.00
2252	Mary Bostwick	SW $\frac{1}{4}$ SE $\frac{1}{4}$	15			40.00 6.00
2257	James Bostwick	NW $\frac{1}{4}$ NE $\frac{1}{4}$	22			40.00 6.00
2422	Collins Anderson	N $\frac{1}{2}$ NW $\frac{1}{4}$, That part of S $\frac{1}{2}$ NW $\frac{1}{4}$ north of R. R.	22			125.00 18.75
2240	Mary M. Pierre	NW $\frac{1}{4}$ SW $\frac{1}{4}$	14			40.00 6.00
2241	John Theodore Pierre	SW $\frac{1}{4}$ SW $\frac{1}{4}$	14			40.00 6.00
2253	Henry Bostwick	SE $\frac{1}{4}$ SE $\frac{1}{4}$	15			40.00 6.00
2258	Isabel Bostwick	NE $\frac{1}{4}$ NE $\frac{1}{4}$	22			40.00 6.00
Total of Unit.....					805.00	\$120.75

[237]

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

LEGEND

RANGE UNIT MAPS

Permittee Brian Connolly

Range Unit No. 185-S

Permit Period 5/1/42 to 4/30/43

<input checked="" type="checkbox"/>	Trust allotments on which authority to grant grazing privileges have been obtained.....	805.00 acres
<input type="checkbox"/>	Tribal land .....	..... acres
<input type="checkbox"/>	Submarginal land .....	..... acres
<input type="checkbox"/>	Trust allotments owned by family using range unit .....	..... acres
<input type="checkbox"/>	Patent in fee or deeded land included in "on and off" .....	..... acres
<input type="checkbox"/>	Trust allotments on which authority has not been obtained and not included in permit.....	..... acres
<input type="checkbox"/>	Patent in fee or deeded land not included in "on and off" clause	
<input type="checkbox"/> acres
<input type="checkbox"/> acres
	Total.....	805.00 acres

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

LEGEND

RANGE UNIT MAPS

Permittee Brian Connolly Range Unit No. 185-S
 Permit Period 5/1/42 to 4/30/43

<input checked="" type="checkbox"/>	Trust allotments on which authority to grant grazing privileges have been obtained.....	805.00 acres
<input type="checkbox"/>	Tribal land .....	..... acres
<input type="checkbox"/>	Submarginal land .....	..... acres
<input type="checkbox"/>	Trust allotments owned by family using range unit .....	..... acres
<input type="checkbox"/>	Patent in fee or deeded land included in "on and off" .....	..... acres
<input type="checkbox"/>	Trust allotments on which authority has not been obtained and not included in permit.....	..... acres
<input type="checkbox"/>	Patent in fee or deeded land not included in "on and off" clause	
<input type="checkbox"/> acres
<input type="checkbox"/> acres
	Total.....	805.00 acres

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

United States

Department of the Interior

Office of Indian Affairs

Range Control Stipulations

1. Grazing Permits.

Grazing permits on Indian reservations are issued subject to certain restrictions and regulations, and with the distinct understanding that the ranges will be reduced both in size and carrying capacity whenever the Commissioner of Indian Affairs shall consider such action essential to the protection of the interests of the Indians. Grazing permits cover Indian lands only, inclusive of unallotted land not otherwise disposed of and all unfenced [238] allotments on which powers of attorney have been executed to the superintendent authorizing him to act for the allottees. Permits must be executed within thirty days after the receipt of notification of an award.

2. Payment of Grazing Fees.

Grazing fees shall be paid annually or semi-annually in advance, as specified in the permit. No charge will be made for animals under six months of age at the time of entering the reservation, which are the natural increase of the stock upon which fees are paid. Payments will be made for calves colts, and lambs over six months old for the time grazed on the reservation after that age is reached at the same rate as for full grown stock.

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

3. Excess or Deficit of the Number of Stock Specified.

Unless the number of livestock specified in the permit is reduced by the Commissioner of Indian Affairs, the permittee will not be allowed credit or rebate in case the full number is not grazed on the area. However, if the number authorized is exceeded, without previous authority, the permittee will be required to pay in addition to the regular charges as provided in the permit, a penalty equal to 50 per cent thereof for such excess stock and the stock will be held until full settlement has been made.

4. Crossing Permits.

Livestock shall not be driven upon or across any reservation without first securing a standard form crossing permit No. 5-929, properly signed by an authorized official of the Indian Service. This permit will state the number of head, dates of travel, class of stock, trail to be used, [240] and destination. Such stock must be moved not less than 5 miles in case of sheep and 10 miles in case of cattle each day, and stock shall not remain more than 12 hours at any bed ground or camping place. In case of unnecessary delay, or willful trespass, the superintendent or his authorized agent shall assess and collect such damages as may seem reasonable. Owners of stock will anticipate their time of entry and secure a permit well in advance of the date when the stock will enter upon the reser-

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

vation. All stock will be refused entry upon the reservation until a permit to enter has been issued. The agency office and the officer in charge must be notified at least 5 days in advance in order that arrangements may be made for an official to meet the stock. Stock owners who introduce their stock upon the reservation without proper authority will be considered as trespassers and their stock will be removed from the reservation and denied the right to return. The right is hereby reserved to issue crossing permits over all ranges, regardless of whether or not special driveways have been established thereover, and provided that the movement of stock so authorized shall be effected under the supervision of the superintendent or his agent. A permittee will not authorize another permittee to drive stock across his range.

5. Quarantine Regulations.

A.. stock covered by permit is subject to the quarantine laws and regulations now in force or hereafter to be promulgated by the United States and the State in which the reservations are situated. [241]

6. Law and Order.

All regulations relative to the maintenance of law and order on Indian reservations and those forbidding the introduction of intoxicating liquors will be complied with by the permittee and his employees.

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

7. Entering the Range.

The earliest date upon which stock will be permitted to enter the range will be the date shown in the permit. Notice must be given to the superintendent prior to entering the reservation. On reservations where permanent driveways have been established all livestock will be required to enter or leave the reservation on the particular driveway designated by the superintendent. On reservations where driveways have not been established and roads and trails are used for the movement of livestock, the route to be followed will be the most practicable one available and will be designated by the superintendent.

8. Counting of Livestock.

All livestock grazing upon or crossing Indian reservations must be counted by an authorized officer of the Indian Service. Arrangements should be made for counting all livestock before it enters the reservation. Permittees are required to notify the superintendent a sufficient length of time in advance to permit him to have a representative present when stock are counted on or off the reservation. The right is reserved by the Indian Service to have a representative present at each round-up to check the number of stock, and in the event that the permittee shall fail or refuse to round-up his stock at proper times and in a satisfactory manner for the purpose [242] of allowing a count of the stock, the superintendent shall have the right to

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

round-up and count said stock at the expense of the permittee.

9. Branding of Stock.

All livestock grazed under permit on Indian reservations or livestock which is authorized to cross said reservations under formal crossing permit must be branded so as to be identified. The brands of all livestock grazed upon the reservation under permit must be recorded in the office of the superintendent with the owner's name.

10. Affidavit of Permittee.

If grazing permits are issued for a period exceeding one year, the permittee will be required to execute (or have executed by a competent foreman) an affidavit showing the number of livestock grazed under authority of such permit and on hand at the close of June of each year, and, in case of occupancy of the area during the previous winter, the number carried over, if any; and another affidavit at the close of December of each year showing the livestock then on hand and the number carried during the summer of that year, or such period as may be required by the Commissioner of Indian Affairs. Affidavits should be made on standard form 5-370.

11. Camp Record.

A camp record showing the number of each camp, approximate number of days of feed available, dates used, and losses from predatory animals, etc., will

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

be required in connection with all sheep grazing permits. Reports should be made by the permittee at the close of each [243] grazing season on standard form 5-518. A record should also be made of all predatory animals killed on the range unit by the permittee and his employees and a report made to the superintendent. In States where bears are protected by law only such bears may be killed as are actually killing or attempting to kill livestock.

12. Camp Fires.

Camp fires must not be built against logs, stumps, or trees. The ground around the fire must be cleared of all inflammable material to at least a distance of 6 feet on all sides. The fire itself must be built in a hole cut at least 10 inches into the mineral earth. The camp fire must be completely put out with water or mineral earth whenever the camp is left alone even for a short time. It is suggested that stoves be used in camp whenever possible, in order to decrease the fire hazard. Each camp outfit must include a shovel and an ax, each in good condition.

13. Smudge Fires.

Smudge fires must not be made unless absolutely necessary. They must never be made in places which have not been fully cleared for a distance of 25 feet on all sides. A smudge fire must never be made near the roots of a tree, in or near a stump or snag, and must be close to and in plain sight of camp. Such fires, when not serving the

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

purpose for which they are made and when the camp is deserted or moved, must be immediately and completely extinguished with water or by burying with mineral earth.

14. Conduct in Case of Fire.

Whenever a permittee discovers an unauthorized and [244] uncontrolled fire burning, whether started by his own carelessness or in some other way, he should put it out if he can. If it can not be put out or placed under temporary control, it should be reported to the nearest forest or grazing officer as soon as possible. In case of fire all range users are expected to place themselves and their employees at the service of the forest or grazing officer in charge for such work in connection with the fire as the officer may request. The failure of any permittee to cooperate to the fullest extent possible in the control of forest and range fires may result in the immediate cancellation of any permits which he may hold and his removal from the reservation. The unauthorized setting of a fire or carelessness in connection with an authorized fire may result in criminal prosecution under Section 6 of the act of June 25, 1910 (36 Stat. L., 855-857).

15. Trespass.

All permittees must avoid trespassing. In case of trespass the herder and packer may be excluded from the reservation. The owner is liable to prosecution for civil damages. When upon the reservation the herder, packer, and camp mover must

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

understand that should the instructions of their employer and the forest or grazing officer disagree as to the manner in which the range should be used, they must follow the instructions of the officer. Ordinarily the grazing movements of stock of a permittee within the range assigned him will not be interfered with, but the superintendent reserves the right to direct such movement whenever he deems it [245] necessary for the proper protection and utilization of the range. The following acts constitute trespass:

(a) The grazing upon or the driving of any stock across the reservation without a written permit, or the grazing upon or the driving across any reservation in violation of the terms of a permit.

(b) The grazing of stock upon Indian land within an area closed to grazing of that kind of stock.

(c) The grazing of stock by a permittee or lessee upon an area withdrawn from use for grazing purposes.

(d) Allowing stock to drift and graze upon the reservation without a written permit.

(e) Violation of any of the terms of the grazing permit or crossing permit.

(f) Refusal to move stock upon instructions of an authorized officer of the Indian Service when an injury is being done to the range or forest by reason of improper handling of the stock.

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

16. Damage to Roads, Trails, or Springs.

And person or persons to whom grazing permits or crossing permits have been issued receive such permits with the understanding that they are obligated to repair all damage to roads or trails caused by the presence of their stock in any part of the reservation. Permittees must build any new roads, trails, or bridges found necessary for the proper handling of their stock. They must also fence any springs or seeps on Indian land which are being damaged by the trampling of their stock, if they shall be ordered to do so by the superintendent or his duly authorized representative. [246]

17. Damage to Indian Property.

The permittee will exercise due precaution to prevent injury to the premises or livestock of Indians and will be required to return to the vicinity of any Indian's home any livestock belonging to such Indian which may have strayed through the handling of stock under this permit or drifted away with the permittee's herd. The permittee will be required to reimburse the Indians for any damage that may be done to their premises or livestock through the acts of the permittee, his employees, or livestock.

18. Bedding Sheep.

The bedding ground must be changed every day unless some natural condition will not allow the change to be made. Where possible the bedding out system will be used. Except where camp wagons

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

are used no bed ground will be occupied for more than two nights, and where camp wagons are being used three nights will be the maximum time allowed. Failure to observe these rules will result in that part of the range being withdrawn from the grazing area and possible removal of the stock from the reservation. The trailing of sheep into and out from a permanent bed ground will not be allowed. Bed grounds where possible will be located at least one-quarter of a mile from a running stream, spring, or other water.

19. Disposition of Carcasses.

The carcasses of all animals which die upon the reservation from contagious or infectious diseases must be burned at once, and the carcasses of all animals which die close to water, trails, or other places where they will be a [247] nuisance must be removed immediately and buried or burned. The same extreme care should be taken when building or putting out a fire for burning a carcass as in case of a fire for any other purpose.

20. Salting of Stock.

When the forest or grazing officers shall require it all stock grazed under permit must be salted regularly at such places and in such manner as may be designated. This rule applies more particularly to cattle but on some ranges may also apply to sheep. The use of troughs is advocated and these should be placed on rocky ground and well removed from water. Under no conditions will salt be placed

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

at or near water. The proper use of salt on all ranges should aid in preventing stock from remaining too long at watering places and thereby permanently damaging the feed. Stock will alternate between salt and water if the two are widely separated and will consume as much range around a salt ground as around a water hole.

21. Handling of Sheep.

The open-herding system of handling sheep should be used on all ranges where applicable. The principal points in this system are:

(a) Herding in the lead of sheep instead of in the rear, and training them to spread out and graze quietly.

(b) Grazing rather than driving when going to and from water.

(c) Bedding down the sheep on fresh bed grounds where night overtakes them, with proper selection of bed grounds so the sheep will be contented.

(d) Camping close to the sheep each night by using a burro or horse to pack the herder's food and bed, or packing the herder's outfit with a saddle horse from a central camp. [248]

(e) Using dogs as little as possible after the sheep are properly trained and keeping dogs principally to protect the flock from predatory animals.

(f) Ewes with lambs will invariably graze around the bed ground before leaving. For this

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

reason ewes and lambs should never be camped twice in the same place, if avoidable.

22. Protection of Game, Fish, and Birds.

It is expected that herders and other employees will comply with the game laws of the State in which the reservation is located and will assist the forest, grazing, and State officers in the enforcement thereof, and they will be required to comply with all regulations of the Indian Service regarding fish and game.

23. Range Improvements.

It is the policy of the Service to encourage the construction of improvements necessary for the proper management of livestock and the utilization of the range. Proper range improvements will make available much feed which could not otherwise be utilized. However, the cost of such improvements will be borne by the permittee unless otherwise provided for in the permit.

24. Condition of Camping Ground.

Camp grounds must be kept in a clean and sanitary condition. All rubbish, tin cans, etc., must be properly burned or buried during occupancy or upon removal to new sites.

25. General Conduct.

These stipulations have been made for the assistance and guidance of permittees and become a part of their grazing permits. If faithfully carried out they will promote the best interests of all concerned. This fact [249] should be recognized by

(Testimony of Brian Connolly.)

Defendant's Exhibit No. 7—(Continued)

livestock owners and a spirit of hearty cooperation maintained. The Service desires permittees who will work with the forest and grazing officers. Those who comply with the stipulations will be given every reasonable consideration consistent with good business management, while those who disregard them will be denied the privilege of further grazing upon Indian reservations.

26. Applicability of Stipulations.

The above range control stipulations are hereby prescribed for use in all grazing permits except as special provision shall be made by the Commissioner of Indian Affairs.

27. Interpretation of Stipulations.

The final interpretation of these stipulations shall rest with the Secretary of the Interior.

DEPARTMENT OF THE IN-
TERIOR, OFFICE OF IN-
DIAN AFFAIRS, WASH-
INGTON

Approved: May 29, 1931.

C. J. RHOADS,
Commissioner

DEPARTMENT OF THE IN-
TERIOR, OFFICE OF THE
SECRETARY, WASHING-
TON

Approved: June 4, 1931.

JOS. M. DIXON

First Assistant Secretary

(Testimony of Brian Connolly.)

Q. Mr. Connolly, in the summer of 1941, how many head of cattle were you running altogether of your own, yours and Dan's?

A. I don't think there was over one hundred and thirty, [250] possibly one hundred and forty.

Q. One hundred and thirty head?

A. Possibly one hundred and forty.

Q. It would not exceed one hundred and forty?

A. I do not think so.

Q. Might be less? A. Yes sir.

Q. And where were you yourself living at that time in 1941 with respect to these various tracts?

A. I was living on Willow Creek.

Q. On Willow Creek? A. Yes sir.

Q. And by Willow Creek, to what land do you refer?

A. That is permit one hundred and eighty-five, that they call permit one hundred and eighty-five now.

Q. That has been received in evidence?

Mr. Allan: We did not offer it.

Mr. McCabe: That is defendants' exhibit number seven.

Q. And at that time did you have in your employ any person at all that was helping to herd or helping take care of your cattle?

A. No sir.

Q. Did you have any of the members of your family helping you at that time?

A. Yes, all the boys was.

(Testimony of Brian Connolly.)

Q. You mean the boys that you have testified to, as to their ages, Dan, and the other boys?

A. Yes sir.

Q. And in handling your cattle, Mr. Connolly, what [251] *what* was your practice as to endeavoring to keep them on the land for which you had the right to graze, for instance, the Unit twelve and these other lands concerning which you have testified?

A. We tried to keep them on that Unit as much as we could.

Q. And how did you handle that with respect to every day going out and looking for any of your livestock?

A. Well, the boys go out every morning.

Q. At your instructions? A. Yes sir.

Q. And what were your instructions to them as to keeping any of your cattle on its own range?

A. We wanted to get them back to this water hole at least by noon.

Q. And you told them every day to bring the stock back to your own range?

A. On our own water hole or reservoir.

Q. And by the water hole or reservoir, do you mean the reservoir or water hole embraced on the land in Unit twelve?

A. Yes, the reservoir is in twelve.

Q. And that reservoir is all on land on which you had a permit at that time? A. Yes.

(Testimony of Brian Connolly.)

Q. And did you likewise yourself in addition to the boys herding or riding around, did you likewise ride around yourself to keep your stock on your own home range?

A. Yes, we made a trip over there once or twice a week. [252]

Q. Would you do that once or twice a week to supplement the work of the boys? A. Yes sir.

Q. In riding around would you find that some of the time that your stock had strayed on some of the adjoining land?

A. Yes, they always have done that.

Q. In riding around and getting your stock to turn them back, did you observe other stock ranging in that area during the period of 1941?

A. Yes sir.

Q. And do you know whose other stock, and the number of head that was ranging on this adjoining area, adjoining Unit twelve in 1941?

A. We did not make a count on all of them, but we made a count on some of them.

Q. Tell us during that time the number of head and who they belonged to, if you know?

A. That was in 1941?

Q. Yes.

A. There was around *forth* head of Devereaux' cattle, and Gobert's.

Q. And who else, just name those that you can think of and the number?

A. And Mrs. Perrin with about four or five brands too.

(Testimony of Brian Connolly.)

Q. How many head of cattle?

A. Well, there was all the way from say from five to six up to thirty or forty.

Q. Is there any other, just name them, one right after the other? [253]

A. Ornstad Brothers had some in there.

Q. How many head?

A. They had all the way from ten up to fifty or two hundred head, and we have seen all the way from one to forty head of Fred Lewis' in there.

Q. And would those cattle be on this area testified to this morning by Mr. Stephenson, and the other witnesses for the Government, where they had seen some of your cattle at different times?

A. I didn't quite get that question.

Q. Would you see cattle or livestock of other persons than your own on this area where the witnesses testified this morning, these different sections that you or they saw your stock at times?

A. Yes, there was always some stock of other people mixed with mine.

Q. How about the fence around the area in Unit twelve, and west, north and south?

A. There ain't any. One just at the place.

Q. And that is the fence around your hay meadow and house?

A. It is a hay meadow. We have a horse pasture, and there is a hay meadow in the other. Practically three sections of fence.

Q. Practically three sections are fenced?

A. Yes sir.

(Testimony of Brian Connolly.)

Q. Is there any other fence of any kind or character in that area of Unit twelve, or in any area where the lands are located, which the witnesses testified concerning this morning?

A. You can go west and strike no fence for thirty miles.

Q. On the west? [254] A. Yes.

Q. On the south, how far would you go before striking a fence? A. About six miles.

Q. And on the north?

A. About three or four miles.

Q. Did you ever at any time drive any of your cattle knowingly on any of the land, other than you had, that was embraced in your Unit and permits concerning which you have testified to?

A. No sir.

Q. Were your instructions to the boys concerning which you have testified, at all times to keep the cattle on their own range? A. Yes sir.

Q. And, Mr. Connolly, did anybody at any time, Government or otherwise, come to you and make any statement to you that your cattle were trespassing or grazing on somebody else's land?

A. Not until the 4th day of August of 1941.

Q. And how did you learn that?

A. That was by letter.

Q. And did that letter state where the cattle were grazing?

A. No, they just said it was in trespass.

(Testimony of Brian Connolly.)

Q. The letter just stated that your cattle were in trespass?

A. Yes, I believe you have a copy of the letter there.

Q. After you got the letter, did you go out upon the land to see if any of your stock were off of your range? [255]

A. We had always been doing that before that.

Q. And after you got that letter, did you go out to see if any of your stock was out there?

A. We put them right back on.

Q. And how long after you received the letter did you do that?

A. We have been on it ever since.

Q. No, down to the time when you received the letter, how long a period of time after you received that letter did you go out and throw your stock back?

A. We never did throw them back off of my land.

Q. On to your lease. You got the letter on a certain date? A. Yes.

Q. And then you went out to see if there were any of your stock on the adjoining land?

A. Yes.

Q. When did you go out, as soon as you got the letter, or when?

A. I believe I stated that we done it before that, and we have been doing it ever since.

Q. What I am getting at, is how long a period of time was it from the time you received that letter until you went out to see if there was any

(Testimony of Brian Connolly.)

stock trespassing?

A. I went out right away.

Q. The same day?

A. Probably not the same day I got the letter, when I got to town. I didn't go out until the next day.

Q. The following day? A. Yes, sir. [256]

Q. And what time, do you recall of the day was it that you received the letter, in the afternoon?

A. I think it would be in the morning. We start to town, when we start to town we get to town in the morning.

Q. About noon?

A. Less than that, around nine maybe, we go pretty early.

Q. Now, Mr. Connolly, did you hear the testimony of Mr. Stephenson relative to permission for moving cattle back and forth? A. Yes, sir.

Q. When you were moving your cattle back and forth from the different units or ranges, did you communicate that information, or tell the Indian Office what you were doing or going to do?

A. It is not necessary under the rules and regulations to do it.

Q. By what particular regulation or rule do you refer to?

A. There ain't anyone testified you have to do that.

Q. Is there any regulation that has ever been called to your attention requiring an Indian who is moving stock to obtain a permit?

A. There ain't. Not that I know of.

(Testimony of Brian Connolly.)

Q. They have never shown you any such regulation?
A. No, sir.

Q. And you say there is no such regulation?

A. I have looked through the book. [257]

Q. And you cannot find any regulation requiring that of an Indian?
A. No, sir.

Q. Now, was that the only notice or only writing, or only objection that you received concerning your stock having trespassed from any source?

A. I believe so. I received some later on.

Q. Was that oral, or by letter?

A. By letter, I believe.

Q. How?
A. By letter.

Q. And how many times after that did you receive letters of that character?

A. I would now say for sure, at lease once anyhow.

Q. When you received that letter, did you likewise go up and examine the range and turn back any stock you found of yours off your range?

A. It was our practice to do it anyway, without the letter.

Q. It is your practice to do it anyway?

A. Yes, sir.

Q. And did you do that right along?

A. Yes.

Q. Now, after,—since this action was instituted, Mr. Connolly, did you seek to obtain additional land to lease from the Indian Department?

A. Yes, after we heard of this Injunction, after

(Testimony of Brian Connolly.)

they started this Injunction against me, I thought I better get some more land.

Q. So that after this action was started, you wanted [258] some additional land for cattle, and you took it up with them? A. Yes, sir.

Q. And did you receive any letters or communications from Mr. McBride in connection with such request of yours for leasing?

A. I had several of them.

Q. And did this land that you wanted to lease, was that some of the land embraced in these range units that were testified to, or allotments that were testified to this morning by Mr. Stephenson and other witnesses?

A. Yes, some of them, yes.

Q. How many sections was it that you started to obtain leases on?

A. I believe one of the letters states only one section.

Q. How many did you ask for?

A. I asked for four sections.

Q. After you took that matter up with the Indian Office, did you receive a communication from Mr. McBride, or did he hand you a writing?

A. It was mailed to me.

Q. You received that by registered mail?

A. It was not registered.

Q. Just ordinary mail?

A. Just ordinary mail.

Q. And that is defendants proposed exhibit number eight? A. Yes, sir.

(Testimony of Brian Connolly.)

Q. And after you received that, did you discuss the contents of this letter with Mr. McBride?

A. I did. [259]

Q. And he admitted sending it to you?

A. Yes.

Mr. McCabe: We not offer in evidence defendants exhibit number eight.

The Court: Any objections?

Mr. Allan: We object because it is not material in this action.

Mr. McCabe: The purpose is to show that in the complaint it is alleged that the defendants will continue to try to drive their stock and trespass livestock on this area without getting the consent of the Indian Department. That reflects upon the question of the Injunction being made permanent, to show that he made no willful intent to trespass. It merely illustrates he had no willful intent to trespass.

Mr. Allan: We will withdraw the objection.

The Court: It may be received.

Whereupon defendants exhibit number eight was received in evidence without objection, and is in words and figures as follows, to-wit:

DEFENDANTS EXHIBIT No. 8

Forestry & Grazing

301.1

Unit No. 12

United States

Department of the Interior

Office of Indian Affairs

Field Service

(Testimony of Brian Connolly.)

Browning, Montana
January 4, 1943.

Mr. Brian Connolly
Browning, Montana.

Dear Mr. Connolly:

In accordance with Office instruction under [260] date of December 22, it will be necessary for you to bid in competition for grazing privileges. A copy of the advertisement will be sent to you at a later date. For your convenience kindly be advised that the area you requested for allocation is known as Unit No. 12 and 185.

In regard to your request for additional land to be added to Unit 12 kindly be advised that this addition will be impossible. As you know the temporary restraining order issued by the Federal Court covers a portion of the land for which you made application. For this reason until such a time as final action is obtained in the Court in regard to the trespass action, we cannot give you permission to graze your livestock on this land.

Very truly yours,
F. H. McBRIDE,
Superintendent.

ADS:je
Copy

(Testimony of Brian Connolly.)

Q. Did Mr. McBride hand you this exhibit marked defendants exhibit number nine?

A. I believe he mailed it; mailed it to me.

Q. And after you received it in that manner, did you discuss the contents of it with Mr. McBride? A. Yes, sir.

Q. And Mr. McBride is Superintendent at Browning, Montana, for the Blackfeet Indian Agency? A. Yes, sir.

Q. And showing you also defendants proposed exhibit ten, state whether or not that was delivered to you by Mr. McBride?

A. I believe this was mailed to you and you mailed it [261] to me.

Q. This letter? A. Yes, sir.

Q. You didn't get a copy of this letter?

A. You mailed it to me.

Q. Other than getting it from me?

A. No, sir.

Mr. Allan: No objections.

The Court: It may be received in evidence.

Whereupon defendants exhibit number nine was received in evidence and was and is in words and figures as follows, to-wit:

(Testimony of Brian Connolly.)

DEFENDANTS EXHIBIT No. 9

Billings, Montana,
January 12, 1943.

Mr. F. H. McBride,
Superintendent,
Blackfoot Indian Agency,
Browning, Montana.

Re: United States v. Brian Connolly, et al

Dear Mr. McBride:

This office is in receipt of your letter of January 9, 1943, together with its enclosure.

We believe that it will be necessary for Brian Connolly to petition the court and ask it to modify the injunction pendente lite that is now pending against him before he will be authorized to make arrangements through your Agency for his live-stock to graze the lands about which you write.

I will be in Great Falls, Montana, to attend court on January 13, 1943. If possible I shall endeavor to contact Mr. Connolly's attorney and discuss this [262] matter with him because he has also written me about it.

With kindest personal wishes, I remain

Sincerely yours,

ROY F. ALLAN.

Assistant U. S. Attorney.

RFA:J

(Testimony of Brian Connolly.)

Copy sent:

E. J. McCABE

Attorney at Law,
Liberty Theatre Building,
Great Falls, Montana.

Q. This defendants exhibit ten after you received it from me, did you take it up or discuss the contents of it with Mr. McBride?

A. I was up there. I told him I would rather leave it up to the Judge to decide it.

Q. Did you show Mr. McBride the copy of this letter and tell him that you received it from me?

A. Yes, sir.

Q. And you discussed this letter with him?

A. Yes.

Q. And did he say that he had sent that letter to Mr. Allan, did he tell you he had written Mr. Allan this letter?

A. I believe it is the one he said he would write to him at the time, and I showed it to him afterwards.

Q. He said that he was going to write that letter, and he said that was the letter he wrote?

A. He promised to send a letter before that, so I showed him, I did not know, and he promised to write a letter after that.

Q. And you showed him this letter, defendants exhibit [263] ten, and he said he wrote Mr. Allan, and that was the letter he wrote Mr. Allan?

(Testimony of Brian Connolly.)

A. Yes.

Q. Did he say that was the letter he wrote to Mr. Allan, just say yes or no? A. Yes, sir.

Mr. McCabe. We offer in evidence defendants exhibit number ten.

Mr. Allan: No objections.

The Court: It may be received in evidence.

Whereupon defendants exhibit number ten was received in evidence without objections, and is in words and figures as follows, to-wit:

DEFENDANTS EXHIBIT No. 10

Blackfeet Ind. Agency

Browning, Montana

April 22, 1943.

Mr. Roy F. Allan

Assistant U. S. Attorney

Billings, Montana.

Re: United States vs. Brian Connolly

Dear Mr. Allan:

Reference is made to our letter of January 9, 1943, to your reply of January 12, 1943, and our conversation with you in Great Falls in regard to the issuing of a grazing permit to Mr. Connolly covering certain land which is at this time included in the area covered by the temporary court injunction.

Since our conversation with you, we have contacted Mr. E. J. McCabe of Great Falls and Mr. Connolly in regard to this matter. It appears to

(Testimony of Brian Connolly.)

us [264] that Mr. McCabe in particular, and possibly Mr. Connolly, are already to arbitrate the entire trespass case. With this in mind, this office would be agreeable to a modification of the injunction whereby Section 3, Twp. 34 N., Range 9 W. would be excluded provided that Mr. Connolly and his attorney are agreeable to make a satisfactory settlement of the entire case and that the injunction covering the Section 3 be enforced until such a time as a grazing contract may be issued to Mr. Connolly thereon.

The modification of the injunction is agreeable to us under the foregoing recommendations, because we have always been ready and willing to cooperate with Mr. Connolly in this matter. However, if Mr. Connolly in turn is not ready to cooperate with us to the extent of closing this case without further court litigation, then we see no reason why the injunction should be modified in any way at this time.

Kindly feel free to contact Mr. McCabe in regard to this matter, and any agreeable proposition that you may work out with him will be satisfactory with this office.

Very truly yours,

F. H. McBRIDE

Superintendent.

1E. 1/1A. 30

cc. MR. E. J. McCABE

cc: MR. THOMAS L. CARTER,

Regional Forester.

(Testimony of Brian Connolly.)

Q. This morning Mr. Stephenson testified that he had a conversation with you at one time wherein you substantially notified him, or informed him that you could drive your livestock any place you wanted to on [265] the Reservation. Do you recall him so testifying this morning? A. I do.

Q. Did you make that statement to Mr. Stephenson at any time?

A. I didn't make any part of that.

Q. What was the statement you made to him at that time?

A. That we had a right to run for our own family where there is no fence.

Q. Did you make any complaint as to stock that was accidentally strayed off the Unit on the adjoining lands, or what did you say at that time?

A. I tried to explain to him about it, it couldn't be helped to keep them off; it was impossible to keep them off.

Q. That was the substance of your statement?

A. Yes.

Q. Mr. Connolly, how long have you lived upon the Blackfeet Indian Reservation?

A. About forty years.

Q. And during the time that you have been there residing and leasing these various units upon which you range your stock, do you know whether or not it has been the practice of residents of the Reservation to permit their stock to run at large?

Mr. Allan: We object to this. There is no such thing as custom. The Reservation is governed by

(Testimony of Brian Connolly.)

regulations by the Secretary of the Interior and Indian Affairs. It has nothing to do with this [266] case whatsoever.

Mr. McCabe: This is foundational to show that along the line of this testimony which I am seeking to elicit, that the Blackfoot Tribal Business Council, pursuant to authority conferred upon that Council by the Constitution and by-laws, and by the Charter, Corporate Charter of that Tribe, to adopt ordinances relative to the rights of the Indians on the Reservation, and that pursuant to that authority that the Council enacted into a law, that in order to constitute an offense, or render one Indian liable of the Reservation for trespassing stock, that the units must be fenced, or the land must be fenced, and that under the resolution and by-laws so adopted and approved by the Secretary of the Interior, it is expressly recited in his approval that any provisions, or regulations in his Department in conflict with any provision adopted under the constitution and by-laws, were not in effect. In other words, the Secretary by his official act, or approval, all rules and regulations heretofore promulgated by the Interior Department, or by the office of Indian Affairs, so far as they may be incompatible with any of the provisions of this said constitution and by-laws are hereby declared inapplicable to the Blackfeet Tribe Reservation.

Mr. Allan: I am merely objecting as to custom. We think that is the best evidence, if there is any

(Testimony of Brian Connolly.)

such regulation that has been approved by the Secretary. I am merely objecting to custom.

The Court: Suppose you can introduce your [267] rules and regulations, and it will then be a matter of law, whether it will have its effect or not.

Mr. McCabe: Supplementing that, the purpose is to show that the Department itself has construed these various regulations and leases has no application to the Indians on that Reservation. They acquiesced in it through these years up to the present time, and permitted stock to run at large as against property that was not fenced. In other words, that it is a practical construction of their own regulations by an Executive of the Department of the Government.

Mr. Allan: I don't have any such regulation.

Mr. McCabe: I will later introduce these various written documents, and then supplement it by the oral testimony. Possibly I am going at it the wrong way.

The Court: You might show perhaps, subject to the objections that the United States Attorney makes that it has been the custom that cattle and horses promulgaed where the land is unfenced.

Q. Mr. Connolly, do you know whether—

The Court: The testimony so far is that these Units are all fenced, that is, on the part of the Government.

Mr. McCabe: I understand that it is only as to unfenced Units.

(Testimony of Brian Connolly.)

Q. Do you know whether or not there has been a custom among the Blackfeet Indians on the Blackfeet Reservation relative to running their stock at large on that Reservation?

Mr. Allan: Again renewing the objection. We object to any testimony as to custom because the matter [268] is now covered by regulations.

The Court: I don't think that is an issue here. I think we threshed that out on your motion to strike.

Mr. Allan: Yes, on my motion to strike.

The Court: If you are standing upon this regulation of the Council promulgated and approved by the Secretary of the Interior—

Mr. McCabe: Yes.

The Court: You can inquire along that line whether they have been following that regulation, but not asking as to any custom.

Mr. McCabe: Then I will introduce that evidence through the Secretary of the Tribal Council because it is all a matter of written record and minutes. No use taking up the time of the Court with this now.

Cross Examination

By Mr. Allan:

Q. You are a Blackfeet Ward of the Government, an Indian? A. Yes sir.

Q. I believe that you are also a member of this present Tribal Council of the Blackfeet Indians?

A. Yes sir.

(Testimony of Brian Connolly.)

Q. The Tribal Council of the Blackfeet Indians had a resolution drawn a short while ago providing that there be no free grazing on its Tribal lands, on the Blackfeet Indian Reservation, did it not?

A. No sir.

Q. Are you familiar with Resolution number thirty-five [269] of the Blackfeet Indian Tribe?

A. Yes, I believe I am.

Q. What does that Resolution provide?

A. I haven't got it. If you can find it Mr. Allan. It should be there.

Mr. McCabe: I don't seem to have that Resolution.

A. There are some Resolutions there. If the Court will let me, I will show him the Resolution.

The Court: All right, Mr. Connolly, you can go and we will take a recess so that you can find it.

Whereupon a recess was had.

After Recess

Whereupon Brian Connolly was recalled for further cross examination by Mr. Allan.

Q. Directing your attention to Plaintiff's exhibit number eleven, I will ask you if you can recognize that, Mr. Connolly?

A. Yes, I recognize that.

Q. Is that Resolution number thirty-five of the Blackfeet Tribal Council adopted in Assembly on November 2, 1939?

A. Yes.

(Testimony of Brian Connolly.)

Mr. Allan: We now offer Plaintiffs Exhibit No. 11 in evidence.

Mr. McCabe: No objections.

The Court: It may be received.

Whereupon Plaintiff's Exhibit No. 11 was received in evidence without objection, and is in words and figures as follows, to-wit: [270]

PLAINTIFF'S EXHIBIT No. 11

Resolution No. 35

Resolution Adopted by the Blackfeet Tribal
Business Council in Regular Session
Assembled November 2, 1939.

Whereas, all grazing permits and leases on the Blackfeet Indian Reservation expire April 30, 1940, and it is necessary to draft new regulations and approve same.

Therefore, Be It Resolved, by the Blackfeet Tribal Business Council, in regular session assembled, a quorum being present, that it is the expressed wish of the Blackfeet Tribal Business Council that in the granting of grazing privileges on the Blackfeet Indian Reservation that preference shall be granted in the following order:

(1) Members of the tribe shall in all cases receive preference in accordance with the regulations.

(2) Stockmen who have established a residence on the reservation, who have local plants and who are tax payers of Glacier and Pondera counties.

(Testimony of Brian Connolly.)

(3) Bonafide residents of the State of Montana.

(4) After preferences have been taken care of in the above order, consideration then shall be given to those who are non-residents of the State of Montana.

Be It further Ordered, that

(a) In the allocation of range units to Indian permittees, it is with the provision that the minimum rental stipulated in the "Powers of Attorney" be paid the Indian allottee.

(b) The class or classes of livestock which will be allowed to graze on each range unit shall be left to the discretion of the Forestry Department of the Blackfeet [271] Agency.

(c) The average minimum rate per acre which shall be charged for tribal lands and recommended to the allottees for their lands shall be fifteen cents (15c) per acre.

(d) The number of years for which grazing privileges are to be authorized under both allocation and advertisement shall be three (3) years.

(e) Free grazing privileges on the Blackfeet Reservation are abolished.

(f) Indians shall be granted the privilege of meeting the high bid on ranges for which they compete.

(g) The previous permittee is given the privilege of meeting the high bid on a given unit in the order of preference as given above, but he shall not have preferenece over Indian permittees.

(Testimony of Brian Connolly.)

It Is Further Ordered that bond requirements for Indian lessees be waived but that a six-month advance payment of rentals will be required.

That it is the policy of this jurisdiction to require ten percent deposit at the time allocations are made. Should the Indian permittee fail to complete a grazing permit on the unit, the ten percent deposit will be forfeited and paid to the allottees. Upon completion of the grazing permit, the said ten percent deposit shall be applied on the grazing fees.

It is agreed to allow Indians to run livestock in numbers not exceeding 500 head of cattle or 2500 head of sheep without comeptitive bidding and any Indian who wishes to run more than 500 head of cattle or 2500 head [272] of sheep will be required to secure the range through competitive bidding.

It is agreed that Indian permittees shall be given the privilege of running twice the amount of stock that is actually owned and any stock in excess of the amount actually owned by the Indian operator will require the furnishing of a regular bond as evidence of good faity.

All lambs born before April first of each year shall be considered on the basis of two lambs to one sheep.

It Is Further Agreed that the advertisement for the Sale of Grazing Privileges within the Blackfeet

(Testimony of Brian Connolly.)

Reservation as submitted to this Council for their approval be approved.

BLACKFEET TRIBAL BUSINESS COUNCIL

By STEWART HAZLETT

Chairman

By MAE A. WILLIAMSON

Secretary.

This Is to Certify that the foregoing resolution was adopted by the Blackfeet Tribal Business Council of the Blackfeet Tribe of Indians at a regular meeting of said Council held this second day of November, 1939.

MAE A. WILLIAMSON

Secretary.

I Certify that this is a true and correct copy of Resolution No. 35 adopted by the Blackfeet Tribal Business Council on November 2, 1939. Like copies are in the official files of the Agency Office, the Indian Office and the Blackfeet Tribal Business Council Office.

A. D. STEPHENSON

Forest Supervisor [273]

Q. Now, directing your attention to paragraph (e) in parenthesis down there, just to refresh your recollection, I will ask you what that paragraph states?

A. Free grazing permit privileges on the Blackfeet Reservation are abolished.

(Testimony of Brian Connolly.)

Q. In other words, there were no free grazing privileges on the Blackfeet Indian Reservation under that Resolution?

A. It wasn't passed by the Council that way.

Q. I am just asking the question, that is what that Resolution provides for?

A. It was not passed that way.

Q. That was the Resolution that was presented and passed? A. Yes sir.

Q. That was approved and passed?

A. Yes sir.

Q. Since that time I believe you have been instrumental in having that Resolution changed?

A. Yes sir.

Q. Have you a copy of the present Resolution?

A. Yes, it is right there.

Q. Can you tell us what the new Resolution provides. What was the change that was made?

A. The free grazing privilege is out in the new one.

Q. And that sentence is left out?

A. Yes sir.

Q. And that was changed at your instigation, was it not? A. Yes.

Q. And when did you have that changed as a member of [274] the Tribal Council?

A. Oh, I believe it was either the fifth or sixth of November.

Q. Of last year, 1942?

A. I haven't my minutes with me.

Mr. McCabe: You have them there in your hand, haven't you?

(Testimony of Brian Connolly.)

A. No sir, they are talking about something else.

Q. It was in November, 1942?

A. It was changed, yes.

Q. And the change made in November 1942. Is that correct?

A. As far as I can remember it was made. There was a change made some time.

Q. Now, in relation to crossing permits, I believe you testified on direct examination that there was nothing that provided for crossing privileges. Is that correct?

A. Yes sir.

Q. Now, I will just direct your attention to paragraph four of Plaintiff's Exhibit number one, so as to enable you to refresh your recollection?

A. I don't know that I have seen this before.

Q. That is part of the grazing permit that you have, is it not?

A. Yes sir.

Q. The part that you signed?

A. I didn't read it all.

Q. That has been a regulation of the Indian Department for years, and it provides for "livestock will not,— [275] livestock shall not be driven upon or across any Reservation without first procuring a standard form crossing permit number 5-929 properly signed by an authorized official of the Indian Service. This permit will state the number of head, dates of travel, class of stock, trail to be used, and destination. Such stock must be moved not less than five miles in case of sheep and ten miles in case of cattle each day, and stock shall not

(Testimony of Brian Connolly.)

remain more than twelve hours at any bed grounds or camping place. In case of unnecessary delay, or willful trespass, the Superintendent or his authorized agent shall assess and collect such damages as may seem reasonable. Owners of stock will anticipate their time of entry and secure a permit well in advance of the date when the stock will enter upon the Reservation. All stock will be refused entry upon the Reservation until a permit to enter has been issued. The Agency Office and the Officer in charge must be notified at least five days in advance in order that arrangements may be made for an Official to meet the stock."

A. The difference was mine was already on the Reservation.

Q. That applies also to the Reservation, does it not?

A. Into the Reservation, you stated.

Q. We will let the Court interpret that, Mr. Connolly?

A. Certainly.

Q. At the time this action was brought you had been notified by Mr. Graves, who was then Superintendent, that your cattle had trespassed, had you not? [276]

A. Yes sir.

Q. And you had been notified by Mr. Stephenson here, the Forestry and Grazing man on your Reservation to that effect, had you not?

A. It was by Mr. Wershing.

Q. He was Mr. Stephenson's predecessor, wasn't he?

A. Yes.

(Testimony of Brian Connolly.)

Q. And your attitude at that time was that you had a right to run your cattle any place in your vicinity as you say?

A. If there was no fence.

Q. In other words, you refused to comply with the order and regulations of the Indian Department?

A. I did not.

Q. And you attempted to have rules and regulations passed by the Tribal Council to provide for your stray cattle?

A. I did not.

Q. As a matter of fact you brought rules and regulations into this Court the first time that the case came up, and tried to put them in evidence, did you not?

A. We had rules and regulations, but I don't know whether I wanted to put them in evidence.

Q. But those were not rules and regulations that had been approved by the Secretary of the Interior, were they?

A. That was approved by the Secretary of the Interior.

Q. They were not allowed in evidence for that reason?

A. I don't believe it ever come up, that question at all. [277]

Q. In other words, your attitude was one of defiance, that you would run your cattle wherever you wanted to?

A. No sir.

Q. You have changed your mind since that time?

A. I have not changed my mind at all. I am still of that opinion.

(Testimony of Brian Connolly.)

Q. Are you familiar enough with this map to point out the home place on it, and also part of unit twelve?

A. It is the present permit one hundred eighty-five.

Q. And that is indicated by this small oblong, approximately in the center of the map, exhibit two?

A. No, it is more than that. They have not got it all in there.

Q. What is the rest of it. One hundred sixty-five, is that covered too?

A. All of this here, yes, (Indicating), and there is some bad stuff in there.

Q. That is known as one hundred and eighty-five, the additional stuff?

A. It is known as one hundred and eighty-five at the present time, yes.

Q. Just point out exactly where that one hundred and eighty-five is. That is the part that is marked 185. It is right alongside of the part marked 185?

A. It runs south to the railroad.

Q. And it runs south to the railroad?

A. Yes.

Q. Where was your unit twelve?

A. Right there. (Indicating).

Q. As shown by twelve, marked on plaintiff's exhibit [278] number two?

A. Yes sir.

Q. Can you give us the approximate distance between unit one hundred eighty-five and unit twelve?

(Testimony of Brian Connolly.)

A. By car it is always eleven miles.

Q. By the road that the car travels?

A. Yes sir.

Q. Did you have any right to grazing between twelve and one hundred and eighty-five in that eleven miles? A. Yes.

Q. What were those rights based on?

A. Based on a lease on Cut Bank Creek.

Q. Where are those leases?

A. I can name off the ones that we got them from.

Q. I want to see the leases, the actual leases?

A. They went in evidence here this morning already. I don't know the numbers of them.

Q. How much did those leases cover?

A. There was around about two thousand acres.

Q. On Cut Bank Creek?

A. On Cut Bank Creek and north of the river.

Q. That refers to F. G. Farm and Grazing lease 3437? A. Yes.

Q. That is three hundred and forty acres. Is that correct? A. That is some of it, yes.

Q. And then the other, Farm and Grazing Lease number 445 covering two hundred and forty acres. Isn't that correct?

A. It probably is, yes sir. [279]

Q. Other than that, is there any land in there you have leased through the Indian Office?

A. I have leased it through the Indian Office, with their consent.

Q. What is the other land?

(Testimony of Brian Connolly.)

A. The ones that you turned down this morning, that you would not admit in evidence.

A. I mean the two that we have, the two that you have, that we are taking into consideration?

A. There is still another one in there that you don't mention.

Q. Was that approved by the Indian Office?

A. Yes sir.

Q. What section is that. What lease is that?

A. It ain't there. The fellow that owned it notified the Indian Office that he is going to handle it himself.

Q. Is he an Indian? A. Yes.

Q. And a Ward of the Government of the United States? A. Yes.

Q. But you have not the approval of the Indian Department on that lease?

A. We have it, yes.

Q. I thought you just told us the fellow that owned it notified the Indian Department he would handle it himself?

A. Yes, and they approved it.

Q. When was,— And they approved it?

A. Yes.

Q. When was that lease issued? [280]

A. We drew it up before a Notary in the town of Browning.

Q. When was that?

A. It should be on the date of the lease.

Mr. McCabe: What was the lease?

A. Joe Kipp and Jack Kipp.

Mr. McCabe: And which one is this?

(Testimony of Brian Connolly.)

A. Both of them, but you haven't got both of them, but you have the check over there.

Mr. McCabe: You paid for it, didn't you?

A. Yes, we have canceled checks for all of them.

Mr. Allan: Q. As I understand it, this Kipp lease you are talking about, is the one that has not gone through the Agency?

A. It has not gone through, outside of the Agency with their approval.

Q. There is no evidence on the lease that it was approved by the Agency?

A. No, just orally.

Q. Now, in this area of eleven miles between your unit twelve and your home unit one hundred and eighty-five, as I understand *to* it, in accordance with the Agency records, there is seven hundred and ten acres of land that you have a right to graze there?

A. In one eighty-five.

Q. Between those two places?

A. There is more than that.

Q. Well, this four hundred and seventy acres, one farming and grazing lease, and two hundred and forty in the other?

A. What you mean that was approved by the Indian Office? [281]

Q. Yes.

A. It probably is, yes, by a lease.

Q. Now, Mr. Connolly, after this action was started in 1941, you continued to graze your cattle any place that you saw fit, did you not?

(Testimony of Brian Connolly.)

A. No sir.

Q. Wasn't it necessary for the Government to cite you for contempt of court in January 1940, after the temporary restraining order was placed upon you?

A. I was not home when they got on there, and they knew I was not on there.

Q. We had a hearing before this Court, and you were found guilty of contempt of court?

A. Yes sir.

Q. And you were fined fifty dollars?

A. Yes sir.

Q. Now, the Ornstad cattle that you spoke about being in trespass on these various lands, the Ornstad cattle were kept under fence, were they not?

A. No sir.

Q. As to Mrs. Perrin's cattle, how many head does she have?

A. She should have around one hundred head, yearlings.

Q. I mean at the time of this action in 1941?

A. She had one hundred head at that time.

Q. Is she an Indian woman? A. Yes.

Q. Widow woman? A. Yes.

Q. Do you know what, if any, arrangement had been [282] made for her to run her cattle on Unit twenty-two and twenty-three?

A. There never has been.

Q. Do you know?

A. I do know.

(Testimony of Brian Connolly.)

Q. What arrangement had been made to run them there?

A. There has been since but not then, she didn't have any lease; she had no lease.

Q. Now, Fred Lewis, his cattle run under a fenced unit likewise, didn't they?

A. Yes sir.

Q. And at the time that you saw them in trespass was that after a storm, when a few of them got back? A. Before and after.

Q. Mr. Lewis makes it his policy to keep his cattle on his own unit, does he not?

A. Just like I do.

Q. You turn your cattle loose about your home place, and let them go between that and Unit twelve, do you not? A. No, I do not.

Q. In other words, you felt that you were an Indian and a member of the Tribal Council, and you could just about defy the Government and fix your own regulations up there?

A. No sir.

Q. You have changed your mind now?

A. I have never changed it. [283]

Redirect Examination

By Mr. McCabe:

Q. On cross examination you testified that there was a lease on Cut Bank Creek which you had paid for and had taken from certain persons with the consent of the Indian Office at Browning?

A. Yes sir.

Q. And did you pay for those? A. I did.

(Testimony of Brian Connolly.)

Q. I will show you a number of checks. Showing you defendants proposed exhibits number twelve, thirteen, fourteen and fifteen, please state if that is your signature appearing thereof?

A. Yes.

Mr. Allan: May I just inquire, did these checks go through the Indian Agency in relation to the matters about which you are talking Mr. Connolly?

A. Well, I don't think so. They gave their approval.

Mr. Allan: Q. Were they in relation with Indian land?

A. They gave me the approval. They notified the Indian office that they were going to handle them themselves.

Q. Have you any particular lease to show that?

A. There it is, right there.

Mr. McCabe: Q. Now, these exhibits, are those the checks that were given in payment of the land to which you testified on cross examination that you had secured on Cut Bank Creek?

A. Yes sir. [284]

Q. And are those the respective signatures of the respective payees appearing thereon, and endorsed on the back? A. Yes.

Q. And were these checks presented and paid by your bank? A. Yes.

Q. On which they were drawn?

A. Yes sir.

Mr. Allan: I notice there is a check here which

(Testimony of Brian Connolly.)

is marked defendants exhibit fifteen, February 19, 1941, in the amount of eighty-four dollars. What was that for, please?

A. Let me see it please. It states right here on the check one-half payment on leases.

Mr. Allan: One-half payment on lease?

A. Yes sir.

Q. How much land was there?

A. I believe there was eleven hundred and twenty acres.

Mr. Allan: Q. And what period of time was that land being leased for by you?

A. For a year.

Mr. Allan: That was the one-half payment on that amount of land? A. Yes sir.

Mr. Allan: Q. Did you figure that was a reasonable value to pay for the grazing on that land?

A. That is what he asked me for it.

Mr. Allan: Q. Did you feel that that was a reasonable value yourself? [285]

A. Certainly.

Mr. Allan: Q. Now, directing your attention to defendants exhibit number twelve, I will ask you if you can identify what that was given for?

A. That is to Joe Kipp's wife. It states here, for lease on eleven hundred and twenty acres.

Mr. Allan: Q. How long a period of time was that for? A. For a year.

Mr. Allan: Q. How much was the amount of that check? A. Five dollars.

(Testimony of Brian Connolly.)

Mr. Allan: Q. Was that a partial payment, or what?

A. It is a partial payment.

Mr. Allan: Q. Do you feel that that was a reasonable amount to be paid?

A. It was for fifteen cents an acre.

Q. Directing your attention to defendants exhibit number thirteen, I will ask you what that was?

A. That was for a lease on seventy acres of Jack Kipp's land.

Mr. Allan: Q. And for what period of time was that for?

A. For a year.

Mr. Allan: Q. And how much was that check?

A. That is for ten dollars and seventy cents.

Mr. Allan: Q. And was that in partial payment on this same land that you are talking about?

A. No, it is different land. [286]

Mr. Allan: Q. How many acres did that cover?

A. That covered seventy acres.

Mr. Allan: Q. How much per acre?

A. Fifteen cents an acre.

Mr. Allan: Q. Directing your attention to exhibit number fourteen, I will ask you to tell us what that was?

A. That is paid to Mr. Joe Kipp, fifty-nine dollars and no cents, and paid in full for lease, eleven hundred and twenty acres.

Mr. Allan: Q. Were all these checks taken for the same land that you have testified to here?

A. This eleven hundred and twenty acres.

Mr. Allan: Q. For the same period of time?

A. For a year, yes sir.

(Testimony of Brian Connolly.)

Mr. Allan: Q. And you felt that was a reasonable amount that you paid for the land during that time?

A. I paid what they asked for it.

Mr. Allan: Q. And that is what was given?

A. Yes sir.

Mr. Allan: Q. Now, was this lease that you had with the approval of the Superintendent of the Agency?

A. Yes, and Mr. Wershing too.

Mr. Allan: Q. Have you any record to show that, to show the approval?

A. That is by word of mouth, Joe Kipp and I was there, and he was there, and he told him.

Mr. Allan: Q. You had no written approval though by the Agency? [287]

A. I wish he were here, he said it was all right with him.

Mr. Allan: We are going to have to object again because his testimony shows that it was not with the approval of the Agency. Even the President of the United States cannot lease Indian land, because he can not do so in accordance with the statutes.

Mr. McCabe: Q. Now, do I understand that all of these checks relate to the same group of land, eleven hundred and twenty acres and seventy acres, or eleven hundred and ninety acres all together?

A. They are two different pieces of land.

Q. What was the total acreage that was paid for by these checks?

(Testimony of Brian Connolly.)

A. That would be eleven hundred and ninety acres.

Mr. McCabe: We now offer in evidence defendants exhibits twelve, thirteen, fourteen and fifteen.

Mr. Allan: Objected to for the reasons heretofore stated.

The Court: The objection is good, but I will receive them, and consider them later, subject to your objection.

Whereupon defendants exhibits number twelve, thirteen, fourteen and fifteen were received in evidence and are in words and figures as follows:

DEFENDANTS' EXHIBIT No. 12

THE FIRST NATIONAL BANK 93-374

Browning, Montana, June 10, 1941

Pay to the order of Isabell Cook Kipp\$25.00/100
Twenty-five 00/100 Dollars

BRIAN CONNOLLY

For Lease 1120 acres

The First National Bank

PAID

Jun 10 1941

Browning, Montana

Endorsed: Isabell Cook Kipp.

(Testimony of Brian Connolly.)

DEFENDANTS' EXHIBIT No. 13

THE FIRST NATIONAL BANK 93-374

Browning, Mont. Mar. 11 1942

Pay to the Order of Mrs. Genevieve Walter.....\$10.70/100
Ten 70/100 Dollars

BRIAN CONNOLLY

For Lease on 70 acres of estate

The First National Bank

PAID

Mar 13 1942

Browning, Montana

Endorsed: Genevieve Walter

Pay to the order of The First National Bank, Browning,
Montana. Blackfeet Trading Post.

DEFENDANTS' EXHIBIT No. 14

THE FIRST NATIONAL BANK 93-374

Browning, Mont., June 23, 1941

Pay to the Order of Mrs. Joe Kipp\$59.00
Fifty-nine 00/100 Dollars

BRIAN CONNOLLY

For: Paid in full for lease 1120 acres

The First National Bank

Paid Jun 23 1941

Browning, Montana

Endorsed: Mrs. Joe Kipp.

(Testimony of Brian Connolly.)

DEFENDANTS' EXHIBIT No. 15

THE FIRST NATIONAL BANK 93-374

Browning, Mont., Feb. 19, 1941

Pay to the Order of Joe Kipp #2\$84.00
Eighty-four and no/ Dollars.

Half Payment Lease

BRIAN CONNOLLY

The First National Bank

PAID

Feb. 19 1941

Endorsed: Joe Kipp #2.

Q. Now, on cross examination reference was made to a letter from Mr. Graves, stating that your stock was trespassing on August 4, 1941. Please examine defendants exhibit sixteen, and see if that is the letter? A. Yes sir.

Q. And that is the letter that you were examined or questioned about by counsel for the government?

A. Yes sir.

Q. And after you received this letter did you go out and remove any of the stock that was described in that, from out of the other range back on your own range?

A. We did as soon as we got home.

Mr. McCabe: We offer that in evidence.

Mr. Allan: No objection.

The Court: It may be received.

Whereupon defendants exhibit number six-

(Testimony of Brian Connolly.)

teen was received in evidence without objection, and is in words and figures as follows, to-wit:

DEFENDANTS EXHIBIT No. 16

United States
Department of the Interior
Office of Indian Affairs
Field Service [290]
Blackfeet Agency,
Browning, Montana,
August 4, 1941

Brian Connelly,
Browning, Montana.

Dear Sir:

Recently a band of your horses were seen trespassing on Unit #33. There were 65 head in this bunch and many of them were branded ^P on the left jaw which identifies them as your property.

This problem of trespassing horses on this reservation has gone on long enough and steps are being taken to notify the various trespassers and more drastic measures will be taken in the very near future.

On this same trip cows carrying your brand ^P were seen along the road in Unit #22 which is not where they belong and it would be appreciated if you would take some immediate steps to see that this matter is taken care of.

Yours truly,
C. L. GRAVES, St.

(Testimony of Brian Connolly.)

Q. Now, you have been examined on cross examination about a resolution relative to free grazing on the Blackfeet Indian Reservation. Will you please state whether or not that resolution, whether it passed or not, has been a subject of discussion with the Blackfeet Tribal Council?

A. Yes sir.

Mr. Allan: We object to such resolution. The resolution speaks for itself, and it is the best evidence. [291]

The Court: Well, I think so. The resolution was passed first, and was revoked.

Mr. McCabe: We are going to show there was a dispute with some members of the Council; it was never adopted, and some said it was, and in order to obviate that question there was a resolution introduced repealing that resolution.

The Court: Objection sustained as the matter is going into the proceedings of the Council.

Recross Examination

By Mr. Allan:

Q. This Kipp land is about the same type of land as section twenty-three, twenty-four, twenty-five, twenty six, twenty-seven and thirty-four and thirty-five, township thirty-five north, range ten west, Montana Principal Meridian, and also sections three and ten of township thirty-four north of range nine west. It is all about the same type of grazing land, is it not? A. Some of it is.

Q. But under the general heading?

A. Yes.

Witness excused.

Whereupon

DANIEL CONNOLLY

a witness called and sworn on behalf of the defendants, testified as follows:

Direct Examination

By Mr. McCabe:

Q. What is your name? A. Dan Connolly.

Q. Daniel Connolly? [292]

A. Daniel Connolly or Dan Connolly.

Q. Are you a son of Brian Connolly?

A. Yes sir.

Q. In the year 1941 did you have any duties or do any work in connection with cattle owned by Brian Connolly upon the Blackfeet Reservation?

A. Yes sir.

Q. Do you know where the location of the land is, that is known as range Unit number twelve, on which your father had a lease from the Indian Department?

A. No, I don't. I was only told about the leases, only where the lines was. I herded them cattle in there.

Q. Do you know where the Milk River range is that your Dad has? A. Yes.

Q. Have you ridden that range?

A. Yes sir.

Q. And had your father told you to herd that range, or ride that range looking for cattle?

A. Yes sir.

Q. And what were his instructions to you relative

(Testimony of Daniel Connolly.)

to turning back any cattle that you would find off of his range, back on the range?

A. He told me to fetch them back on our range.

Q. Did he also instruct you not to drive any of your cattle off of his range on to other ranges?

A. Yes, he did.

Q. And during 1941, were you employed in your work at various times during the summer and fall.

A. I was there in the spring and in the fall. 293]

Q. And at the time that you were there in the fall were any of your brothers there at the place known as the Milk River range? A. Yes sir.

Q. And which one of the brothers were there. Was there any of the boys there at the time you were there?

A. Yes, Eddie was there during the spring and in the fall, and Victor both, and Charlie too.

Q. Did any of the boys go to school along the early part of September? A. Yes sir.

Q. And then did you take over part of the work of riding and keeping the stock confined?

A. I did.

Q. Did your father show you the lands on which he claimed to have range rights?

A. Yes sir.

Q. And he pointed it out to you and showed it to you? A. Yes sir.

Q. And after that what would be your practice as to covering and riding that area every day, or not?

A. We would ride out and put all our cattle back on our range.

(Testimony of Daniel Connolly.)

Q. Each day? A. Yes.

Q. And when would you start out to do that, in the morning? A. In the morning.

Q. And that was the general practice every day?

A. Yes sir. [294]

Q. Well, while you were riding did you sometimes find some of your Father's stock, or your stock, had strayed over off of the range?

A. Oh, yes.

Q. What would you do?

A. Fetch them back, and put them on the range.

Q. Always while you were riding the territory on your father's range, designated as your father's range, did you see other livestock grazing in that area? A. Yes.

Q. And how many head would you see in groups?

A. I couldn't just say; some times it would be forty head; some times thirty head, and twenty-five head.

Q. Would that be on land surrounding your Father's land, or range land? A. Yes sir.

Q. And did you recognize any of the brands on the stock? A. Yes sir.

Q. Whose brands did you recognize?

A. Devereaux, Perrin's.

Q. Did you notice any Onstad and Lewis stock?

A. Yes.

Q. Is there anyone else that you can think of, that you saw their livestock on there?

A. Not right offhand, there was some there.

(Testimony of Daniel Connolly.)

Q. How many head would comprise these various groups concerning which you have testified?

A. Oh, there was different bunches, some times twenty-five or thirty head, or forty head. You never could tell how many you might run into. [295]

Q. All the way from twenty-five head to forty head?

A. Yes sir.

Q. Did your brothers sometimes ride with you while you were doing this work?

A. Yes, sir.

Q. How far would you find that your Father's cattle, or some of yours, would stray off the range before you would locate them in the different directions?

A. Well, five or six miles.

Q. In different directions?

A. Yes.

Q. Do I understand you to say that you had ridden in directions five or six miles each way from your Father's range?

A. Yes sir.

Q. And are there any fences around there within that area, five or six miles?

A. Yes, there is.

Q. And what place is fenced?

A. There is the old Rim ranch. I don't know, I think Speer has got it.

Q. About how many acres are you able to say is under fence there?

A. I do not know how much really is under fence. There is quite a little bit of farming land.

Q. Is it cultivated land?

A. Yes sir.

Q. I mean is there any fence around the range and grazing land out in that country?

(Testimony of Daniel Connolly.)

A. Yes, there is a sheep outfit, his name is Williamson. [296] He has a lease fenced in there.

Q. How much land is enclosed under that fence, would you say approximately?

A. I do not know how much there is.

Q. Well, are those the only two fences up in that country? A. Yes sir.

Q. Within a distance of five or six miles from your Father's place? A. Yes sir.

Q. Would you say there is a thousand acres that is fenced? A. Yes, I believe so.

Q. Would you say that it is two thousand acres that is fenced?

A. Well, I wouldn't say, but I would say it is a thousand or more, it may be more than that. I couldn't say.

Q. You would not estimate it?

A. No sir.

Q. But, is there lots of open country around your Father's range that is not fenced?

A. Yes sir.

Q. And how far in each direction does that open country extend?

A. Well, it is about twenty miles.

Q. You can go east for about twenty miles,—about thirty miles east? A. Yes sir.

Q. And how far west? [297]

A. Twenty miles.

Q. And how far north?

A. Well, about six miles I would judge, or five miles.

(Testimony of Daniel Connolly.)

Q. And how far south?

A. I would say it is seven miles.

Q. To the next fencing on the south?

A. Yes sir.

Cross Examination

By Mr. Allan:

Q. Do you know where Buffalo Lake is?

A. Yes sir.

Q. Is there a fence around there?

A. Not around Buffalo Lake, no sir.

Q. There is a fence there, isn't there?

A. Yes sir.

Q. That is in addition to the fence you have testified to?

A. Yes sir.

Q. How far is that from Unit twelve?

A. I don't know.

Q. About six miles?

A. I don't know where Unit twelve is.

Q. That is your Father's Unit, that is what your Father has. Your Father has the upper part, north part where he was grazing his cattle?

A. How far did you say it was?

Q. About six miles from there to Buffalo Lake?

A. It is farther than that, but it is fenced, that that I am talking about is likely to be closer.

Q. Are you familiar with Unit one hundred and twenty-nine? [298]

A. No, I ain't accustomed to these Units.

Q. Or Unit twenty-nine?

A. None of these Units.

Q. Are you familiar with Unit One hundred and eighteen?

A. No sir.

(Testimony of Daniel Connolly.)

Q. Which is about twelve miles west?

A. No, I ain't.

Q. You don't know whether those units are fenced or not?

A. I don't know of any unit, no.

Q. You likewise had horses of your own running with your Father's stock, did you not?

A. Yes sir.

Q. What is your brand? A. A. X.

Q. Is that a regular A? A. Yes sir.

Q. With the X hanging from the A. Is that correct, underneath the A? A. Yes sir.

Q. How many head of horses do you have on the Reservation? A. About seven or eight head.

Q. Have you made any provisions for the grazing of those horses, or did you run them with your Fathers?

A. I run them with my Father's, and my Father has got the land.

Redirect Examination

By Mr. McCabe:

Q. Mr. Connolly, you say you don't recognize these Units by numbers? A. No sir.

Q. Are you acquainted with all the areas surrounding [299] your Father's range known as Unit twelve? A. Is that the north place?

Q. Yes, the north place? A. Yes.

Q. The Milk River place?

A. Yes, I am accustomed to that country, and I know it, yes.

Witness excused.

Whereupon

VICTOR CONNOLLY,

a witness called and sworn on behalf of the defendants, testified as follows:

Direct Examination

By Mr. McCabe:

Q. What is your name?

A. Victor Connolly.

Q. And are you a son of Brian Connolly sitting to my left? A. Yes.

Q. Do you know where the land is located that your Father runs his livestock on up on Milk River, known as the Milk River place? A. Yes.

Q. And who was living with you?

A. My brothers was.

Q. And what brothers?

A. Eddie and Charlie and Dan.

Q. Dan? A. Yes

Q. Did your Father have you do any work in connection [300] with any of the cattle he had grazing up there? A. Yes.

Q. And what was your work that he had you do, was it to help the other boys look after the cattle? A. Yes.

Q. And what did he tell you to do in connection with those cattle?

A. To bring them back on the range, on the lease.

Q. Did he tell you to keep looking for cattle, and if you found any away from the lease, to bring them back, put them back on? A. Yes.

(Testimony of Victor Connolly.)

Q. And how often would you ride around with your brothers doing that work?

A. Every morning.

Q. Every morning? A. Yes sir.

Q. About what time would you start out in the morning, if you remember, would it be early in the morning?

A. Yes, we would start out about eight o'clock.

Q. And how long would you work during the day on that work, and getting all the cattle, and turning them back on the lease?

A. We would work until noon. If it was not finished by noon we would go back and work in the afternoon.

Q. You would work as long as it took you to get all the cattle back on the range? A. Yes sir.

Q. Did your Father give you any instructions about keeping your cattle off of the adjoining range? [301] A. Yes sir.

Q. What did he tell you about that?

A. He told us to keep them off of other ranges.

Q. He told you to keep the cattle off of the other ranges? A. Yes sir.

Cross Examination

By Mr. Allan:

Q. Were you working for your Father during the fall of 1942? A. Up to September.

Q. Up to September? A. Yes sir.

Q. You don't know anything that went on after September?

(Testimony of Victor Connolly.)

Q. No, I would be home week ends. I would come home week ends.

Q. How old are you now? A. Thirteen.

Q. You were there just during the summer time?

A. Yes sir.

Redirect Examination

By Mr. McCabe:

Q. Would you come home on week ends?

A. Yes.

Q. And would you likewise work week ends in connection with the cattle? A. Yes sir.

Q. Now, is the place,—this place concerning which you have testified, what I call the Milk River place, also known as the Crown Butte place?

A. Yes sir. [302]

Q. They are one and the same place?

A. Yes sir.

Q. Do you know whether any of your family ever took,—do you know whether any of your family are upon these, any of these range units taking care of the cattle at the present time?

A. My brothers were.

Q. Which ones? A. Eddie and Charlie.

Q. And are they up there now?

A. Yes, they are up there now.

Q. When you left they were? A. Yes sir.

Witness excused.

Whereupon

BRIAN CONNOLLY

was recalled on behalf of the defendants, and testified as follows:

Direct Examination

By Mr. McCabe:

Q. Mr. Connolly, you testified this morning that Charlie and Eddie were helping in taking care of your cattle during the year 1941? A. Yes sir.

Q. And they have not come down here with you to attend the trial?

A. We had to leave them there to take care of the cattle.

Q. You had to leave them there?

A. Yes sir.

Q. Have you any other hired men other than your own [303] children? A. No sir.

Q. You let them take care of the cattle to keep them from trespassing on other land?

A. Yes sir.

Cross Examination

By Mr. Allan:

Q. You are trying to live up to these regulations, now are you not? A. I always have.

Witness excused.

Whereupon

LEO KENNERLY,

a witness called and sworn on behalf of the defendants, testified as follows:

Direct Examination

By Mr. McCabe:

Q. And what is your name?

A. Leo Kennerly.

Q. Where do you reside?

A. At Browning, Montana, on the Blackfeet Reservation.

Q. What position, if any, do you hold with the Blackfeet Indian Tribe?

A. I am the Secretary.

Q. And by Secretary, you mean Secretary of the Blackfeet Tribal Business Council?

A. That is it.

Q. And as such Secretary, do you have the records, official records and minutes of meetings of the Blackfeet Tribal Business Council? A. I do.

Q. And as such Secretary do you have in your custody [304] and control the constitution and by-laws for the Blackfeet Tribe of the Blackfeet Indian Reservation? A. I do.

Q. And do you also have as the Secretary, the Corporate Charter of the Blackfeet Tribe of Montana? A. Yes sir.

Q. On the Blackfeet Indian Reservation of Montana? A. Yes sir.

(Testimony of Leo Kennerly.)

Q. And have you those records with you at the present time? A. Yes sir.

Q. And likewise as such Secretary, do you have the custody of the Law and Order Codes of the Blackfeet Indian Reservation Tribe?

A. Yes sir.

Q. And have you that with you?

A. Yes sir.

Q. Now, will you turn to the Constitution and By-Laws of the Tribe. Have you that with you there? A. Yes sir.

Q. And is there a provision in the Constitution and By-Laws of the Blackfeet Tribe known as and identified in the Constitution and By-Laws as Paragraph K, of Section six on page four?

A. Yes sir.

Q. Of Article six of Section one, on page four?

A. Yes sir.

Q. I wish you would read it into the record?

The Court: Any objection to it?

Mr. Allen: No sir. [305]

Q. In order to get the evidence in, then you will have to read that. Just read that as one of the Powers of the Council.

Section K of Article seven, Powers of the Council: "To promulgate ordinances for the purpose of safe guarding the business and safety of residents of the Blackfeet Indian Reservation, and to establish minor courts for the adjudication of claims or disputes arising amongst the members of the Tribe, and for the trial and punishment of members of

(Testimony of Leo Kennerly.)

the Tribe charged with the commission of offenses set forth in such ordinances.”

Q. Mr. Kennerly, do you also have the approval of the Secretary of the Interior of the constitution and by-laws from which you have read?

A. Yes sir.

Mr. McCabe: We offer in evidence the approval clause of the Secretary of the Interior, Harold L. Ickes, of the constitution and by-laws, and I will ask the witness to read it.

Mr. Allan: No objections.

“I, Harold L. Ickes, the Secretary of the Interior of the United States of America by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984, as amended) do hereby approve the attached constitution and by-laws of the Blackfeet Tribe of the Blackfeet Reservation. All rules and regulations heretofore promulgated by the Interior Department, or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of said [306] constitution or by-laws, are hereby declared inapplicable to the Blackfeet Tribe of the Blackfeet Reservation. All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws. Approved, recommended, A. C. Monahan, Acting Commissioner of Indian Affairs. Signed by Harold L. Ickes, Secretary of the Interior, Washington, D. C., December 13, 1935.”

Q. Now, Mr. Kennerly, refer to the Corporate

(Testimony of Leo Kennerly.)

Charter of the Blackfeet Tribe, and state whether or not in that Charter under the Powers of the Tribe, there is a section identified as Section seven or paragraph seven on page four of the Charter?

A. Of corporate property?

Q. Of corporate property.

Mr. Allan: The only suggestion I have, why does not the counsel introduce the Corporate Charter and the Constitution and By-Laws.

The Court: You might just as well introduce them.

Mr. McCabe: We now offer in evidence defendants exhibit number seventeen, being a copy of the Corporate Charter of the Blackfeet Tribe of the Blackfeet Indian Reservation ratified August 15, 1936.

Mr. Allan: No objection.

The Court: Let it be received in evidence without objection.

Whereupon defendants exhibit seventeen was received in evidence without objections, and is in words and figures as follows, to-wit: [307]

DEFENDANTS EXHIBIT No. 17

Corporate Charter of the Blackfeet Tribe of the
Blackfeet Indian Reservation

A Federal Corporation Chartered Under the Act
of June 18, 1934.

Whereas, the Blackfeet Tribe of the Blackfeet Indian Reservation of Montana constitutes a recog-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)

nized Indian tribe organized under a Constitution and By-laws ratified by the Tribe on November 13, 1935, and approved by the Secretary of the Interior on December 13, 1935, pursuant to section 16 of the Act of June 18, 1934, (48 Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378); and

Whereas, more than one-third of the adult members of the Tribe have petitioned that a charter of incorporation be granted to such Tribe, subject to ratification by a vote of the adult Indians living on the reservation.

Now, Therefore, I Harold L. Ickes, Secretary of the Interior, by virtue of the authority conferred upon me by the said Act of June 18, 1934, (48 Stat. 984), do hereby issue and submit this charter of incorporation to the Blackfeet Tribe of the Blackfeet Indian Reservation to be effective from and after such time as it may be ratified by a majority vote of the adult Indians living on the reservation.

Corporate Existence:

1. In order to further the economic development of the Blackfeet Tribe of the Blackfeet Indian Reservation in Montana by conferring upon the said Tribe certain corporate rights, powers, privileges and immunities; [308] to secure for the members of the Tribe an assured economic independence; and to provide for the proper exercise by the Tribe of various functions heretofore performed by the

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)

Department of the Interior, the aforesaid Tribe is hereby chartered as a body politic and corporate of the United States of America, under the corporate name "The Blackfeet Tribe of the Blackfeet Indian Reservation."

Perpetual Succession:

2. The Blackfeet Tribe of the Blackfeet Indian Reservation shall, as a Federal corporation, have perpetual succession.

Membership:

3. The Blackfeet Tribe of the Blackfeet Indian Reservation shall be a membership corporation. Its members shall consist of all persons now or hereafter entitled to membership in the Tribe, as provided by its duly ratified and approved Constitution and By-laws.

Management:

4. The Blackfeet Tribal Business Council established in accordance with the said Constitution and By-laws of the Tribe, shall exercise all of the corporate powers hereinafter enumerated.

Corporate Powers:

5. The Tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and By-laws of the said Tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the Tribal Constitution and By-laws.

(a) To adopt, use, and alter at its pleasure a [309] corporate seal.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)

(b) To purchase, take by gift, bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations:

1. No sale or mortgage may be made by the Tribe of any land or interests in land, including water power sites, water rights, oil, gas, and other mineral rights now or hereafter held by the Tribe within the boundaries of the Blackfeet Reservation. No sale of any other capital assets of the Tribe exceeding in value the sum of \$10,000 may be made unless approved by a majority vote at a referendum called by the Tribal Council as provided in Article IX of the Constitution of the Tribe.

2. No leases or permits (which terms shall not include land assignments to members of the Tribe) or timber sale contracts covering any land or interests in land now or hereafter held by the Tribe within the boundaries of the Blackfeet Indian Reservation shall be made by the Tribe for a longer term than ten years, and all such leases, permits, or contracts must be approved by the Secretary of the Interior or by his duly authorized representative; but oil and gas leases, or any leases requiring substantial improvements of the land may be made for longer periods when authorized by law.

3. No action shall be taken by or in behalf of the Tribe which is in conflict with regulations authorized by section 6 of the Act June 18, 1934, or in any way operates to destroy or injure the tribal

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)
grazing lands, timber, or other natural resources of the [310] Blackfeet Indian Reservation.

(c) To issue interests in corporate property in exchange for restricted Indian lands, as provided in Article VII, Section 6 of the Constitution of the Tribe.

(d) To borrow money from the Indian Credit Fund in accordance with the terms of Section 10 of the Act of June 18, 1934, (48 Stat. 984), or from any other Governmental agency, or from any member or association of members of the Tribe, and to use such funds directly for productive tribal enterprises, or to loan money thus borrowed to individual members or associations of members of the Tribe, provided that the amount of indebtedness to which the Tribe may subject itself shall not exceed one hundred thousand dollars, except with the express approval of the Secretary of the Interior.

(e) To engage in any business that will further the economic well being of the members of the Tribe or to undertake any activity of any nature whatever, not inconsistent with law or with any provisions of this charter.

(f) To make and perform contracts and agreements of every description, not inconsistent with law or with any provisions of this charter, with any person, association, or corporation, with any municipality or any county, or with the United States or the State of Montana, including agree-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)

ments with the State of Montana for the rendition of public services: Provided, That any contract involving payment of money by the corporation in excess of \$10,000 in any one fiscal year shall be subject to the approval of the Secretary of the Interior [311] or his duly authorized representative.

(g) For the purpose of obtaining any loan, to pledge or assign any chattels purchased with the proceeds of such loans, or any income arising from activities of the Tribe financed by the proceeds of such loan, or any income due or to become due on any notes, leases, or contracts taken as security for the reloan by the Tribe of the proceeds of such loan whether or not such notes, leases, or contracts, are in existence at the time, but no pledge or assignment shall be made to any person or agency, other than the Secretary of the Interior, without the approval of the Secretary of the Interior.

(h) To deposit corporate funds, from whatever source derived, in any national or state bank to the extent that such funds are insured by the Federal Deposit Insurance Corporation, or secured by a surety bond, or other security, approved by the Secretary of the Interior; or to deposit such funds in the postal savings bank or with a bonded disbursing officer of the United States to the credit of the Tribe.

(i) To sue and to be sued in courts of competent jurisdiction within the United States; but the grant or exercise of such power to sue and to be sued

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)

shall not be deemed a consent by the said Tribe, or by the United States to the levy of any judgment, lien or attachment upon the property of the Tribe other than income or chattel specially pledged or assigned.

(j) To exercise such further incidental powers, not inconsistent with law, as may be necessary to the conduct of corporate business. [312]

Termination of Supervisory Powers.

6. Upon the request of the Blackfeet Tribal Council for the termination of any supervisory power reserved to the Secretary of the Interior under sections 5b, (2), 5f, 5g, 5h, and section 8 of this charter, the Secretary of the Interior, if he deems it wise and expediant so to do, shall approve such termination and submit it for ratification by the Tribe. It shall be effective upon ratification by a majority vote at an election in which at least thirty per cent of the adult members of the Tribe residing on the reservation shall vote. If at any time after ten years from the effective date of this charter, such request shall be made and the Secretary shall disapprove such termination or fail to approve or disapprove it within ninety days after its receipt, it may then be submitted by the Secretary of the Interior or by the Tribal Council to popular reefrendum of the adult members of the Tribe actually living within the reservation and if approved by two-thirds of the eligible voters, shall be effective.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)

Corporate Property:

7. No property rights of the Blackfeet Tribe, as heretofore constituted, shall be in any impaired by anything contained in this charter, and the tribal ownership of unallotted lands, whether or not assigned to the use of any particular individuals, is hereby expressly recognized.

The individually owned property of members of the Tribe shall not be subject to any corporate debts or liabilities, without such owners' consent. Any [313] existing lawful debts of the Tribe shall continue in force, except as such debts may be satisfied or canceled pursuant to law.

Corporate Dividends:

8. The Tribe may issue to each of its members a non-transferable certificate of membership evidencing the equal share of each member in the assets of the Tribe and may distribute per capita, among the recognized members of the Tribe, the net income of corporate activities including the proceeds of leases of tribal assets, including oil royalties over and above sums necessary to defray corporate obligations to members of the Tribe or to other persons and over and above all sums which may be devoted to the establishment of a reserve fund, and other expenses incurred by the Tribe for corporate purposes. Any such distribution of profits in any one year amounting to a per capita cash payment of \$100 or more, or amounting to a dis-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)
tribution of more than one-half of the accrued surplus, shall not be made without the approval of the Secretary of the Interior.

Corporate Accounts:

9. The officers of the Tribe shall maintain accurate and complete public accounts of the financial affairs of the Tribe, which shall clearly show all credits, debts, pledges and assignments, and shall furnish an annual balance sheet and report of the financial affairs of the Tribe to the Commissioner of Indian Affairs. The Tribal Council shall elect from within or without their number a Treasurer of the Tribe who, under their control and direction, shall be the custodian of all [314] moneys which come under the jurisdiction or control of the Tribal Council. He shall pay out money in accordance with the orders and resolutions of the Council, and no disbursements shall be made without the signature or approval of the Treasurer. He shall keep accounts of all receipts and disbursements and shall make written reports of same to the Tribal Council at each regular and special meeting. He shall be bonded in such an amount as the Council by resolution shall provide, such bond to be approved by the Commissioner of Indian Affairs. The books of the Treasurer shall be audited at the direction of the Council or of the Commissioner of Indian Affairs, and shall be open to inspection by members of the Tribe or duly authorized repre-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)
sentatives of the Government at all reasonable times.

Amendments:

10. This charter shall not be revoked or surrendered except by act of Congress, but amendments may be proposed by resolutions of the Council which if approved by the Secretary of the Interior, to be effective shall be ratified by a majority vote of the adult members living on the reservation at a popular referendum in which at least 30 per cent of the eligible voters vote.

Ratification:

11. This charter shall be effective from and after the date of its ratification by a majority vote of the adult members of the Blackfeet Tribe living on the Blackfeet Indian Reservation, provided at least 30 per cent of the eligible voters shall vote, [315] such ratification to be formally certified by the Superintendent of the Blackfeet Indian Agency and the Chairman of the Tribal Council of the Tribe.

Submitted by the Secretary of the Interior for ratification by the Blackfeet Tribe of the Blackfeet Indian Reservation in a popular referendum to be held on August 15, 1936.

[Seal]

HAROLD L. ICKES

Secretary of the Interior.

Washington, D. C., July 18, 1936

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)

Certification

Pursuant to section 17 of the Act of June 18, 1934 (48 Stat. 984), this charter, issued on July 18, 1936, by the Secretary of the Interior to the Blackfeet Tribe of the Blackfeet Reservation, was duly submitted for ratification to the adult Indians living on the reservation and was on August 15, 1936, duly ratified and accepted by a vote of 737 for and 301 against, in an election in which over thirty per cent of those entitled to vote cast their ballots.

JOSEPH W. BROWN,

Chairman of the Blackfeet
Tribal Business Council.

C. L. GRAVES,

Superintendent, Blackfeet
Agency.

Q. Now, Mr. Kennerly, if you will turn to the Law and Order Code which I believe you said you have with you? A. Yes sir.

Mr. Allan: I was going to suggest that the [316] Code be likewise offered in evidence at this time.

The Court: Yes.

Mr. McCabe: We introduce in evidence as defendants exhibit number eighteen, same being a copy of the Law and Order Code of the Blackfeet Indian Tribe and particularly to Section 15

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 17—(Continued)
of Chapter 5 of the Code, pages sixteen and seventeen.

Whereupon defendants exhibit number eighteen was received in evidence without objection, and is in words and figures as follows, to-wit:

DEFENDANTS EXHIBIT No. 18

Law and Order Code of the Blackfeet Indian Tribe Chapter 1

The Blackfeet Indian Court.

Sec. 1. Jurisdiction

The Blackfeet Indian Court shall have jurisdiction over all offenses enumerated in Chapter 5, when committed by any Indian, as defined by this section, within the Blackfeet Indian Reservation.

With respects to any of the offenses enumerated in Chapter 5 over which Federal or State courts may have lawful jurisdiction, the jurisdiction of the Court shall be concurrent and not exclusive. It shall be the duty of the said Court to order delivery to the proper authorities of the State of Federal Government or of any other tribe or reservation, for prosecution, any offender, there to be dealt with according to law or regulations authorized by law, where such authorities consent to exercise jurisdiction lawfully bested in them [317] over the said offender.

For the purpose of the enforcement of these ordi-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

nances an Indian shall be deemed to be any person of Indian descent who is a member of the Blackfeet Indian Tribe, and any other Indian over whom the Blackfeet Indian Court may have jurisdiction by virtue of an order issued by the Secretary of the Interior. The Blackfeet Indian Reservation shall be taken to include all territory within the reservation boundaries, including fee patented lands, roads, waters, bridges, and lands used for agency purposes.

All Blackfeet and any other Indians, over whom the Blackfeet Indian Court may have jurisdiction by virtue of an order issued by the Secretary of the Interior, employed in the Indian Service shall be subject to the jurisdiction of the Court, but any such employee appointed by the Secretary of the Interior shall have the right of appeal to the Secretary from any sentence of the court and no such sentence appealed shall become effective until it shall have been approved by the Secretary.

Sec. 2 Appointment of Judges

The Court shall consist of three judges, one of whom shall be designated as Chief Judge, and the others as associate judges. Each judge shall be appointed by the Tribal Business Council with the approval of the Commissioner of Indian Affairs. Their salary may be fixed and paid by the Commissioner of Indian Affairs or by the Tribe.

Each judge shall hold office for a period of four

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

years, unless sooner removed for cause or by reason [318] of the abolition of the said office, but shall be eligible for reappointment.

A person shall be eligible to serve as judge of the Court only if he (1) is a member of the Black-foot tribe, and (2) has never been convicted of a felony, or, within one year then last past, of a misdemeanor.

No judge shall be qualified to act as such in any case wherein he has any direct interest or wherein any relative by marriage or blood, in the first or second degrees, is a party.

Sec. 3 Removal of Judges

Any Judge of the Court may be suspended, dismissed or removed by the Tribal Business Council, with the approval of the Commissioner of Indian Affairs.

Sec. 4 Court Procedure

Sessions of the Court for the trial of cases shall be held by the Chief Judge, or, in case of his disability, by one of the associate judges selected for the occasion by all of the judges.

The time and place of court sessions, and all other details of judicial procedure not prescribed by these ordinances, shall be laid down in Rules of Court approved by the Tribal Business Council.

It shall be the duty of the judges of the Court to make recommendations to the Tribal Business Council for the enactment or amendment of such Rules of Court in the interests of improved judicial procedure.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 5 Appellate Proceedings

All the judges of the reservation shall sit together, at such times and at such places as they may [319] find proper and necessary for the dispatch of business, to hear appeals from judgments made by any judge at the trial sessions. There shall be established by Rule of Court the limitations, if any, to be placed upon the right of appeal both as to the types of cases which may be appealed and as to the manner in which appeals may be granted, according to the needs of their jurisdiction. In the absence of such Rule of Court any party aggrieved by a judgment may appeal to the full court upon giving proper assurance to the trial judge, through the posting of a bond or in any other manner, that he will satisfy the judgment if it is affirmed. In any case where a party has perfected his right to appeal as established herein or by Rule of Court, the judgment of the trial judge shall not be executed until after final disposition of the case by the full court. The full court may render judgment upon the case by a majority vote.

Sec. 6 Juries

In any case where, upon preliminary hearing by the Court, a substantial question of fact is raised, the defendant may demand a jury trial.

A list of eligible jurors shall be prepared by the Tribal Business Council each year.

In any case, a jury shall consist of six residents selected from the list of eligible jurors by the judge.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Any party to the case may challenge not more than three members of the jury panel so chosen.

The judge shall instruct the jury in the law governing the case and the jury shall bring a verdict for the complainant or the defendant. The judge shall [320] render judgment in accordance with the verdict and existing law. If the jury is unable to reach a unanimous verdict, verdict may be rendered by a majority vote.

Each juror who serves upon a jury shall be entitled to a fee of \$1.50 a day for each day his services are required in Court.

Sec. 7 Witnesses

The several judges of the Court shall have the power to issue subpoenas for the attendance of witnesses whether on their own motion or on the request of the Police Commissioner or Superintendent or any of the parties to the case, which subpoena shall bear the signature of the judge issuing it. A limit of five paid witnesses for each side is hereby established. Each witness answering such subpoena shall be entitled to a fee of \$0.50 a day for each day his services are required in court. Failure to obey such subpoena shall be deemed an offense as provided in Chapter 5, Sec. 35, of these ordinances. Service of such subpoenas shall be by a regularly acting member of the Indian Police or by an Indian appointed by the Court for that purpose.

Witnesses who testify voluntarily shall be paid their reasonable expenses by the party calling them.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 8 Professional Attorneys

Professional attorneys shall not appear in any proceeding before the Court unless Rules of Court have been adopted as set forth in section 4 of this Chapter prescribing conditions governing their admission and practice before the Court.

Sec. 9 Clerks [321]

The Tribal Business Council may with the approval of the Superintendent detail a clerk to act as Clerk of the Court. The Clerk of the Court shall render assistance to the Court, to the police force of the Reservation and to individual members of the Tribe in the drafting of complaints, subpoenas, warrants and commitments and any other documents incidental to the lawful functions of the Court. It shall be the further duty of said clerk to attend and to keep a written record of all proceedings of the Court, to administer oaths to witnesses, to collect all fines paid and to pay out all fees authorized by these ordinances, and to make an accounting thereof to the Treasurer of the Black-foot Indian Tribe and to the Tribal Business Council.

Sec. 10 Records

The Court shall be required to keep, for inspection by duly qualified officials, a record of all proceedings of the Court, which record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names and addresses

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)
of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the Court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

Sec. 11 Complaints

No complaint filed in the Court shall be valid unless it shall bear the signature of the complainant or complaining witness, witnesses by a *fully* qualified Judge of the Court or by the Superintendent or by [322] by any other qualified employee of the Reservation.

Sec. 12 Warrants to Apprehend

The Chief Judge of the Court shall have the authority to issue Warrants to Apprehend and shall have the power to delegate this authority to Associate Judges, said warrant to issue in the discretion of the Court only after a written complaint shall have been filed, bearing the signature of the complaining witness. Service of such warrants shall be made by a duly qualified member of the Indian Police or other police officer of the Blackfeet Tribe or of the United States Indian Service. No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified Judge of the Court.

Sec. 13 Arrest

No member of the Indian Police shall arrest any person for any offense defined by these regulations or by Federal law, except when such offense shall

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

occur in the presence of the arresting officer or he shall have reasonable evidence that the person arrested has committed an offense or the officer shall have a warrant commanding him to apprehend such person.

Sec. 14 Search Warrants

The Judges of the Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of said Court. However, no warrant of Search and Seizure shall be issued except upon a duly signed and written complaint based upon reliable information or belief and charging the commission of some offense against the tribe. [323] No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and describes the articles or property to be seized and bears the signature of a duly qualified Judge of the Court. Service of Warrants of Search and Seizure shall be made only by members of the Indian Police or police officers of the Blackfeet Tribe or of the United States Indian Service.

No policeman shall search or seize any property without a warrant unless he shall know, or have reasonable cause to believe, that the person in possession of such property is engaged in the commission of an offense under these ordinances. Unlawful search or seizure will be deemed trespass and

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)
punished in accordance with Chapter 5, Section 15
of these ordinances.

Sec. 15 Commitments

No Indian shall be detained, jailed or imprisoned under these ordinances for a longer period than forty-eight (48) hours unless there be issued a commitment bearing the signature of a duly qualified Judge of the Court. There shall be issued, for each Indian held for trial, a Temporary Commitment on the forms prescribed in these regulations.

Sec. 16 Bail or Bond

Every Indian charged with an offense before the Court may be admitted to bail. Bail shall be by cash bond or by two reliable members of any Indian tribe who shall appear before a Judge of the Court, where complaint has been filed and there execute an agreement in compliance with the form provided therefor and made a part of [324] these ordinances. Maximum bonds shall not be in excess of \$360.00 with a minimum bond not to exceed \$50.

Sec. 17 Definition of Signature

The term "signature" as used in these regulations shall be defined as the written signature, official seal, or the witnessed thumb print or mark of any individual.

Sec. 18 Relation With the Court

The Court may request employees of the Indian Service, particularly those who are engaged in social

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

service, health and educational work, to assist in the preparation of the facts in any case and in the proper treatment of individual offenders.

Whenever the Court is in doubt as to the meaning of any law, treaty or regulation it may request the Superintendent to furnish an opinion on the point in question.

Chapter 2

Civil Actions

Sec. 1 Jurisdiction

The Court shall have jurisdiction of all suits wherein the defendant is a member of the tribe and of all other suits between members and non-members which are brought before the Court by stipulation of both parties. No judgment shall be given on any suit unless the defendant has actually received notice of such suit and ample opportunity to appear in court in his defense. Evidence of the receipt of the notice shall be kept as part of the record in the case. In all civil suits the complainant may be required to deposit with the clerk [325] of the court a fee or other security in a reasonable amount to cover costs and disbursements in the case.

Sec. 2 Law Applicable in Civil Actions

In all civil cases the Court shall apply any laws of the United States that may be applicable, any authorized regulations of the Interior Department,

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

and any ordinances or customs of the tribe, not prohibited by such Federal laws.

Where any doubt arises as to the customs and usages of the tribe the Court may request the advice of counsellors familiar with these customs and usages.

Any matters that are not covered by the traditional customs or by ordinances of the tribe, or by applicable Federal laws and regulations, shall be decided by the Court of Indian Offenses according to the laws of the State.

Sec. 3 Judgments in Civil Actions.

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured party, or the performance of some other act for the benefit of the injured party.

Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Tribe.

Where the injury was inflicted as the result [326] of accident, or where both the complainant and the defendant were at fault, the judgment shall com-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

pensate the injured party for a reasonable part of the loss he has suffered.

Sec. 4 Costs in Civil Actions

The Court may assess the accruing costs of the case against the party or parties against whom judgment is given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible under Section 7 of Chapter 1, and the fees of jurors in those cases where a jury trial is had, and any further incidental expenses connected with the procedure before the Court as the Court may direct.

Sec. 5 Payment of Judgments From Individual Indian Moneys

Whenever the Blackfeet Indian Court shall have ordered payment of money damages to an injured party and the losing party refuses to make such payment within the time set for payment by the Court, and when the losing party has sufficient funds to his credit at the Agency office to pay all or part of such judgment, the Superintendent shall be requested to hold Individual Indian Moneys to his credit and pay them out upon the order of the Court. Only moneys of the individual and not of his family may be held to pay such judgments. Accruals may be also held to pay such Court charges.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Chapter 3

Domestic Relations

Sec. 1 Recording of Marriages, Divorces and Adoptions

All Indian marriages, divorces and adoptions shall be recorded within three months at the Blackfeet [327] Indian Agency. Failure to do so shall subject the offender to a fine not to exceed five dollars.

Sec. 2 Marriages, Divorces and Adoptions

All members of the Blackfeet Indian Tribe shall hereafter be governed by State law and subject to State jurisdiction with respect to marriages, divorces and adoptions hereafter consummated.

Sec. 3 Determination of Paternity and Support

The Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Court.

Sec. 4 Determination of Heirs

When any member of the tribe dies leaving property other than an allotment or other trust property subject to the jurisdiction of the United States, any member claiming to be heir of the decedent may bring a suit in the Court to have the Court

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

determine the heirs of the decedent and to divide among the heirs such property of the decedent. No determination of the heirs shall be made unless all the possible heirs known to the Court, to the Superintendent, and to the claimant have been notified of the suit and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the reservation under the jurisdiction of the Court must be notified by mail and a copy of the notice must be preserved in the [328] record of the case.

In the determination of heirs the Court shall apply the custom of the tribe as to inheritance if such custom is proved. Otherwise, the Court shall apply State law in deciding what relatives of the decedent are entitled to be his heirs.

Where the estate of the decedent includes any interest in restricted allotted lands or other property held in trust by the United States, over which the Examiner of Inheritance would have jurisdiction, the Court may distribute only such property as does not come under the jurisdiction of the Examiner of Inheritance, and the determination of heirs by the Court may be reviewed, on appeal, and the judgment of the Court modified or set aside by the said Examiner of Inheritance, with the approval of the Secretary of the Interior, if law and justice so require.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 5 Approval of Wills

When any member of the tribe dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Court shall, at the request of any member of the tribe named in the will or any other interested party, determine the validity of the will after giving notice and full opportunity to appear in court to all persons who might be heirs of the decedent, as under Section 4 of this Chapter. A will shall be deemed to be valid if the decedent had a sane mind and understood what he was doing when he made the will and was not subject to any undue influence of any kind from another person, and if the will was made in writing and [329] signed by the decedent in the presence of a representative of the Blackfeet Tribal Business Council and a representative of the Superintendent of the Blackfeet Indian Agency, who sign such will as witnesses, provided that if a will is made under circumstances when the attendance of such representatives cannot be secured other witnesses may serve. If the Court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or to their heirs, but no distribution of property shall be made in violation of a proved tribal custom which restricts the privilege of tribal members to distribute property by will.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Chapter 4

Sentences

Sec. 1 Nature of Sentences

Any Indian who has been convicted by the Court of violation of a provision of the Blackfeet Law and Order Code shall be sentenced by the Court to work for the benefit of the tribe for any period found by the Court to be appropriate; but the period fixed shall not exceed the maximum period set for the offense in the Code, and shall begin to run from the day of the sentence. During the period of sentence the convicted Indian may be confined in the agency jail if so directed by the Court. The work shall be done under the supervision of the Superintendent or of an authorized agent or committee of the Tribal Business Council as the Court may provide. [330]

Whenever any convicted Indian shall be unable or unwilling to work, the Court shall, in its discretion, sentence him to imprisonment for the period of the sentence or to pay a fine equal to \$2 a day for the same period. Such fine shall be paid in cash, or in commodities or other personal property of the required value as may be directed by the Court.

In addition to any other sentence, the Court may require an offender who has inflicted injury upon the person or property of any individual to make restitution or to compensate the party injured,

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)
through the surrender of property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, and whether the offense was malicious or willful and whether the offender has attempted to make amends, and shall give due consideration to the extent of the defendant's resources and the needs of his dependents. The penalties listed in Chapter 5 of these ordinances are maximum penalties to be inflicted only in extreme cases.

Sec. 2 Probation

Where sentence has been imposed upon any Indian who has not previously been convicted of any offense, the Court may in its discretion suspend the sentence imposed and allow the offender his freedom as probation, upon [331] his signing a pledge of good conduct during the period of the sentence upon the form provided therefor and made a part of these ordinances.

An Indian who shall violate his probation pledge shall be required to serve the original sentence plus an additional half of such sentence as penalty for the violation of his pledge.

Sec. 3 Parole

Any Indian committed by the Court who shall

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)
have without misconduct served one half of the sentence imposed by such Court shall be eligible to parole. Parole shall be granted only upon the signing of the form provided therefor and made a part of these ordinances.

Any Indian who shall violate any of the provisions of such parole shall be punished by being required to serve the whole of the original sentence.

Sec. 4 Board of Pardons and Parole

The Chief Judge of the Blackfeet Indian Court, a representative of the Blackfeet Tribal Business Council designated by the Chairman of the Council, and the Superintendent of the Blackfeet Indian Agency, or his designated representative, shall constitute a Board of Pardons and Parole, with power to pardon or parole persons under court sentence, by majority vote of the Board.

Sec. 5 Juvenile Delinquency

Whenever any Indian who is under the age of 18 years is accused of committing one of the offenses enumerated in the Law and Order Code of the Blackfeet Tribe, the judge may in his discretion hear and determine [332] the case in private and in an informal manner, and, if the accused is found to be guilty, may in lieu of sentence place such delinquent for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 6 Deposit and Disposition of Fines.

All money fines imposed for the commission of an offense shall be paid to the Clerk of the Court and by him paid over to the Treasurer of the Tribe to be held as a special account. The said Treasurer shall pay out of such account, upon the order of the Clerk of the Court signed by a judge of the Court, specified fees to specified jurors or witnesses authorized under the ordinances of the Blackfeet Tribe. The Clerk of the Court shall keep an accounting of all such deposits and withdrawals for the inspection of any person interested. Whenever such fund shall exceed the amount necessary with a reasonable reserve for the payment of the court expenses before mentioned, the Tribal Business Council shall designate further expenses of the work of the Court, or other public expenses, which shall be paid from these funds.

Wherever a fine is paid in property, or wherever property is confiscated pursuant to any tribal ordinances, the property shall be turned over under the supervision of the Clerk of the Court to the custody of the Treasurer of the Tribe to be sold, or, if the Tribal Business Council so directs, to be disposed of in other ways for the benefit of the tribe. [333] The proceeds of any sale of such property shall be deposited in the same manner as money fines.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Chapter 5

Code of Indian Tribal Offenses

Sec. 1. Assault.

Any Indian who shall attempt or threaten bodily harm to another person through unlawful force or violence shall be deemed guilty of assault, and upon conviction thereof shall be sentenced to labor for a period not to exceed five days, a \$10.00 fine or both such fine and imprisonment, or shall be required to furnish a satisfactory bond to keep the peace.

Sec. 2. Assault and Battery.

Any Indian who shall wilfully strike another person or otherwise inflict bodily injury, or who shall be offering violence cause another to harm himself shall be deemed guilty of assault and battery and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days or fine of \$180.00 or both such fine and imprisonment.

Sec. 3. Carrying Concealed Weapons.

Any Indian who shall go about in public places armed with a dangerous weapon concealed upon his person unless he shall have a permit signed by a judge of the Blackfeet Indian Court and countersigned by the Superintendent of the Blackfeet Agency, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 30 days or a fine of \$50.00, or both such fine and [334] imprisonment; and the weapons so carried may be confiscated.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 4. Abduction.

Any Indian who shall wilfully take away or detain another person against his will or without the consent of the parent or other person having lawful care or charge of him, shall be deemed guilty of abduction and upon conviction thereof shall be sentenced to labor for a period not to exceed 90 days or a fine of \$180.00, or both such fine and imprisonment.

Sec. 5. Theft.

Any Indian who shall take the property of another person, with intent to steal, shall be deemed guilty of theft and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days, or a fine of \$180.00, or both such fine and imprisonment.

Sec. 6. Embezzlement.

Any Indian who shall, having lawful custody of property not his own, appropriate the same to his own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days or a fine of \$180.00, or both such fine and imprisonment.

Sec. 7. Fraud.

Any Indian who shall by wilful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

or other property, shall be deemed guilty of fraud and upon [335] conviction thereof shall be sentenced to labor for a period not to exceed ninety days or a fine of \$180.00 or both such fine and imprisonment.

Sec. 8. Forgery.

Any Indian who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be deemed guilty of forgery and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days, or a fine of \$180.00, or both such fine and imprisonment.

Sec. 9. Misbranding.

Any Indian who shall knowingly and wilfully misbrand or alter any brand or mark on any live-stock of another person, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days or a fine of \$180.00, or both such fine and imprisonment.

Sec. 10. Receiving Stolen Property.

Any Indian who shall receive or conceal or aid in concealing or receiving any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed forty-five days or a fine of \$90.00 or both such fine and imprisonment.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 11. Extortion.

Any Indian who shall wilfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any moneys, goods, [336] property, or anything else of any value, shall be deemed guilty of extortion and upon conviction thereof shall be sentenced to labor for a period not to exceed fifteen days or a fine of \$30.00, or both.

Sec. 12. Disorderly Conduct.

Any Indian who shall engage in fighting in a public place, disturb or annoy any public or religious assembly, or appear in a public or private place in an intoxicated and disorderly condition, or who shall engage in any other act of public indecency or immorality, shall be deemed guilty of disorderly conduct and upon conviction thereof shall be sentenced to labor for a period not to exceed fifteen days or a fine of \$30.00, or both.

Sec. 13. Reckless Driving.

Any Indian who shall drive or operate any automobile, wagon, or any other vehicle in a manner dangerous to the public safety, shall be deemed guilty of reckless driving and upon conviction thereof shall be sentenced to labor for a period not to exceed fifteen days, and may be deprived of the right to operate any automobile for a period not to exceed six months. For the commission of such offense while under the influence of liquor, the of-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

fender may be sentenced to labor for a period not to exceed forty-five days or a fine of \$90.00 or both such fine and imprisonment.

Sec. 14. Malicious Mischief.

Any Indian who shall maliciously disturb, injure or destroy any livestock or other domestic animal or other property, shall be deemed guilty of malicious [337] mischief and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days or a fine of \$180.00, or both such fine and imprisonment.

Sec. 15. Trespass.

Any Indian who shall go upon or pass over any cultivated or enclosed lands of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof, or who shall wilfully and knowingly allow livestock to occupy or graze on the cultivated or enclosed lands, shall be deemed guilty of an offense and upon conviction shall be punished by a fine not to exceed \$5 and the cost of the Court, in addition to any award of damages for the benefit of the injured party.

Sec. 16. Injury to Public Property.

Any Indian who shall, without proper authority, use or injure any public property of the tribe, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed fifteen days or a fine of \$30, or both.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 17. Maintaining a Public Nuisance.

Any Indian who shall act in such a manner, or permit his property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his neighbors, shall be deemed guilty of an offence and upon conviction thereof shall be sentenced to labor for a period not to exceed five days or a fine of \$10.00, or both, and may be required to remove such nuisance when so ordered by the Court.

Sec. 18. Liquor Violation.

Any Indian who shall possess, sell, trade, [338] transport or manufacture any beer, ale, wine, whiskey or any article whatsoever which produces alcoholic intoxication, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed 60 days or a fine of \$120, or both, and shall forfeit to the Blackfeet Tribe any vehicle, or any other property, used in any violation of this section. Such vehicle, or other property, may be sold at public auction, under Court order, for the benefit of the Blackfeet Tribe.

Sec. 19. Cruelty to Animals.

Any Indian who shall torture or cruelly mistreat any animal, shall be deemed guilty of an offense and shall be sentenced to labor for a period not to exceed fifteen days or a fine of \$30.00, or both.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 20. Adultery.

Any Indian who shall have sexual intercourse with another person, either of such persons being married to a third person, shall be deemed guilty of adultery and upon conviction thereof shall be sentenced to labor for a period not to exceed fifteen days, or a fine of \$30.00, or both such fine and imprisonment.

Sec. 21. Illicit Cohabitation.

Any Indian who shall live or cohabit with another as man and wife not then and there being married shall be deemed guilty of illicit cohabitation and upon conviction thereof shall be sentenced to labor for a period not to exceed fifteen days, or a fine of \$30.00, or both such fine and imprisonment. [339]

Sec. 22. Prostitution.

Any Indian who shall practice prostitution, or who shall knowingly keep, maintain, rent or lease any house, room, tent, or other place for the purpose of prostitution shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days or a fine of \$180.00, or both such fine and imprisonment.

Sec. 23. Contagious and Infectious Diseases.

Any Indian who shall violate any provision of the Montana State Public Health rules and regula-

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

tions shall be deemed guilty of an offense and upon conviction thereof shall be sentenced in the discretion of the Blackfeet Court, such sentence not to exceed that provided by the said State rules and regulations.

Sec. 24. Failure to Support Dependent Persons.

Any Indian who shall, because of habitual intemperance or gambling, or for any other reason, refuse or neglect to furnish food, shelter, or care to those dependent upon him, including any dependent children born out of wedlock, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed three months, for the benefit of such dependents.

Sec. 25. Failure to Send Children to School.

Any Indian who shall, without good cause, neglect or refuse to send his children, or any children under his care, to school shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed five days or a [340] fine of \$10.00, or both.

Sec. 26. Contribution to the Delinquency of a Minor.

Any Indian who shall wilfully contribute to the delinquency of any minor shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed three

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)
months or a fine of \$180.00, or both such fine and imprisonment.

Sec. 27. Bribery.

Any Indian who shall give any money, property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct, and any Indian who shall accept, solicit or attempt to solicit any bribe, as above defined, shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed three months or a fine of \$180, or both such fine and imprisonment. Any councilman convicted of bribery shall be subject to expulsion from the Tribal Business Council, as provided in Article V, Section 2, of the Constitution of the Blackfeet Tribe. Any other tribal officer convicted of bribery shall be deprived of his office by order of the Court.

Sec. 28. Perjury.

Any Indian who shall wilfully and deliberately, in any judicial proceeding of the Court, falsely swear or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or procure another person so to do, shall be deemed guilty of [341] perjury and upon conviction thereof shall be sentenced to labor for a period not to exceed three months or a fine of \$180.00, or both.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 29. False Arrest.

Any Indian who shall wilfully and knowingly make, or cause to be made, the unlawful arrest, detention or imprisonment of another person, shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed three months or a fine of \$180.00, or both.

Sec. 30. Resisting Lawful Arrest.

Any Indian who shall wilfully and knowingly, by force or violence, resist or assist another person to resist a lawful arrest shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed fifteen days or a fine of \$30, or both.

Sec. 30. Refusing to Aid Officer.

Any Indian who shall neglect or refuse, when called upon by any Indian Police or other police officer of the Blackfeet Tribe or the United States Indian Service, to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement shall be deemed guilty of an offense, and upon conviction, shall be sentenced to labor for a period not to exceed ten days or a fine of \$20.00, or both such fine and imprisonment.

Sec. 32. Escape.

Any Indian, who, being in lawful custody, for

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

[342] any offense, shall escape or attempt to escape or who shall permit or assist or attempt to permit or assist another person to escape from lawful custody shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed three months or a fine of \$180.00, or both.

Sec. 33. Disobedience to Lawful Orders of Court.

Any Indian who shall wilfully disobey any order, subpoena, warrant or command duly issued, made or given by the Blackfeet Indian Court or any officer thereof shall be deemed guilty of an offense and upon conviction thereof shall be fined in an amount not exceeding \$180.00, or sentenced to labor for a period not to exceed three months.

Sec. 34. Attempted Rape.

Any Indian who shall wilfully and knowingly by force or violence attempt to rape another or assist in permitting an attempted rape shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed ninety days or a fine of \$180 or both such fine and imprisonment.

Chapter 6

Law Enforcement

Sec. 1. Police Officers.

The ordinances of the Blackfeet Indian Tribe shall be enforced by any duly qualified enforcement officer.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Sec. 2. Police Commissions.

The Tribal Business Council may issue police commissions either to persons employed by the Indian [343] Service, to other members of the tribe properly qualified for the performance of police duties, or to any other law enforcement officer.

Sec. 3. Duties of Police.

Police officers of the Blackfeet Tribe shall be officers of the Blackfeet Indian Court, and shall execute all orders of the Court and all ordinances and resolutions of the Tribal Business Council.

Sec. 4. Law Enforcement.

All resolutions and ordinances of the Tribal Business Council shall be faithfully enforced by officers of the Tribe, including the judges, regardless of their personal opinions as to the wisdom or constitutionality of such resolutions or ordinances.

Sec. 5. Extradition.

The Chairman of the Tribal Business Council may order the return to any other jurisdiction of any person accused of crime therein, and may request the authorities of other jurisdictions to return to the Blackfeet Indian Reservation persons accused or convicted of crime who have fled from the jurisdiction of the Blackfeet Indian Court.

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Chapter 7

Legal Forms

Form No. 1

Criminal Complaint

Blackfeet Indian Court

Blackfeet Indian Reservation

Blackfeet Indian Tribe

vs.

....., Defendant

The above named defendant is charged by this [344] with the offense of in violation of Sec. ..., Chapter ..., Law and Order Code of the Blackfeet Tribe, to-wit: the said defendant did on or about the ... day of, 19.. within the Blackfeet Indian Reservation. and against the peace and dignity of the Blackfeet Indian Tribe.

(Signed)

Complaining Witness

Witnessed

.....

(Judge of the Blackfeet Indian Court or Superintendent of the Blackfeet Indian Agency)

Dated:

Personal History of Defendant: (To be filled out by Clerk of Court)

Married or Single..... Occupation.....

No. of Dependents..... Age.....

Condition of Health..... Address.....

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Previous Arrests and Convictions.....

Name and address of witnesses:

.....
.....

Form No. 1A

Notice of Action

Blackfeet Indian Court

Blackfeet Indian Reservation

.....

vs.

....., Defendant

To....., Defendant.

You are hereby notified that the attached complaint has been filed against you and you are herewith [345] ordered to appear in Court at....., to answer to such complaint on this.....day of 19....

Dated:

.....

Judge of the Blackfeet Indian Court, Blackfeet Indian Reservation.

I have this day served the above order upon the above named defendant.

Dated:

.....

Officer's Signature

.....

Title

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Form No. 2

Civil Complaint

Blackfeet Indian Court

Blackfeet Indian Reservation

....., Complainant

vs.

....., Defendant

The above-named complainant, complaining of the defendant, declares:

.....

By reason of the foregoing facts, the complainant demands that the defendant shall be adjudged to make just redress.

.....

Complainant

Witnessed:

.....

(Judge of the Blackfeet Indian Court or Superintendent of the Blackfeet Indian Agency)

Dated:

Form No. 3

Subpoena

Blackfeet Indian Court

Blackfeet Indian Reservation

.....

vs.

.....

[346]

To.....

.....

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

You are hereby commanded to appear before the above-entitled court at on the day of, 19.., at o'clock ..M., to serve as..... in the above-entitled case. Failure to obey this subpoena, without good cause, makes you liable to prosecution.

Dated:

.....

Judge of the Blackfeet Indian
Court

.....

Clerk of the Blackfeet Indian
Court

Form No. 4

Warrant to Apprehend

Blackfeet Indian Court

Blackfeet Indian Reservation

Blackfeet Indian Tribe

vs.

....., Defendant

To any Indian Police, Police Officer of the Blackfeet Indian Tribe, or Officer of the United States Indian Service:

Whereas a complaint has been filed in the above-entitled court charging that the offense of..... in violation of Sec., Chapter, Law and Order Code of the Blackfeet Tribe, has been

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)
committed and accusing the above named defendant thereof, you are commanded to apprehend and bring the said defendant before a judge of this Court to show cause why he should not be held for trial.

Dated:

.....

Judge of the Blackfeet Indian
Court [347]

Received the within warrant on the day
of, 19.., and executed the same on the
.....day of, 19.., by arresting the
within named defendant at and now
have him before the court as commanded.

Dated:

.....

(Officer's Signature)

.....

(Title)

Form No. 5
Search Warrant

Blackfeet Indian Court
Blackfeet Indian Reservation

To any Indian Police, Police Officer of the Black-
feet Indian Tribe, or Officer of the United
States Indian Service:

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

A complaint having been filed before me by
 charging that certain property,
 to-wit:
 is in the possession of at the fol-
 lowing described place, to-wit:
 in violation of Sec., Chapter, Law
 and Order Code of the Blackfeet Tribe.

You are therefore commanded to make immedi-
 ate search of the person or premises described
 above for the following described property, to-wit:

and if the same be found or any part thereof to
 arrest the said and bring him and
 the property before [348] a judge of this Court to
 show cause why he should not be held for trial.

Date:

.....

Judge of the Blackfeet Indian
 Court

Return

Received the within warrant on the day
 of, 19.., and executed the same on
 the day of, 19...

.....

.....

(Title)

Dated this day of, 19...

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Form No. 6

Bond

Blackfeet Indian Court

Blackfeet Indian Reservation

Blackfeet Indian Tribe

vs.

....., Defendant

Be it remembered, that the undersigned bondsmen upon their word of honor promise and agree:

That if the above named defendant fails to appear personally before the above entitled court, on the day of, 19.., there to answer to a complaint duly filed against him, and at such other time or times as he may be ordered by the Court until final disposition of the case, the undersigned bondsmen will forfeit the amount of bond set by the Chief Judge and this bond may be collected through any moneys on deposit of which may become deposited to his credit in the Agency Office.

[349]

Signed.....

Signed.....

Signed and agreed to before me this day of, 19...

.....

Judge of the Blackfeet Indian
Court

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Form No. 7

Temporary Commitment

Blackfeet Indian Court

Blackfeet Indian Reservation

Blackfeet Indian Tribe

vs.

....., Defendant

To the Keeper of the Jail of the Blackfeet Indian
Tribe:

Whereas the above named defendant has been lawfully arrested and is now before the Court; and whereas good cause has been shown why he should be detained until the final hearing and decision of his case, you are hereby commanded to receive the above-named defendant in custody and hold him until the next session or further order of the court.

.....

Judge of the Blackfeet Indian
Court

Dated:

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Form No. 8

Final Commitment

Blackfeet Indian Court

Blackfeet Indian Reservation

Blackfeet Indian Tribe

vs.

....., Defendant

To the Keeper of the Jail of the Blackfeet Indian
Tribe:

The above-named defendant having this day been found guilty of violation of Sec. ..., Chapter ..., [350] Law and Order Code of the Blackfeet Tribe, by committing the offense of....., I have adjudged that he serve in jail. You are therefore commanded to receive him in custody for the period stated unless otherwise ordered by the Court.

.....

Judge of the Blackfeet Indian

Court Jurisdiction

Dated:

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Form No. 9

Judgment Order

Blackfeet Indian Court

Blackfeet Indian Reservation

.....

vs.

....., Defendant

The above-entitled case having been heard before
this Court, judgment is this day rendered to the
following effect

.....

Judge of the Blackfeet Indian
Court

Dated:

Satisfaction of Judgment

Satisfaction of the above judgment is hereby
acknowledged.

Dated:

.....

Name of Party, Policeman or
Jailer

Recorded

Dated:

.....

Clerk of the Blackfeet Indian
Court [351]

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Form No. 10

Probation Pledge

Blackfeet Indian Court

Blackfeet Indian Reservation

Blackfeet Indian Tribe

vs.

....., Defendant

I, the undersigned, having been sentenced by the above Court on this day, the day of, 19..., for violation of Sec., Chapter, Law and Order Code of the Blackfeet Indian Tribe, for committing the offense of, and not having been previously sentenced by this Court for any offense, agree, upon the suspension of this sentence, not to violate any law of regulation of the Blackfeet Indian Tribe, or of the United States, or otherwise wilfully engage in any misconduct during the term of this probation, which shall expire on the day of, 19...

Agreed.

.....

Prisoner

Order of the Court

The above named prisoner having signed the foregoing agreement, is hereby allowed his freedom under the terms set forth.

Dated:

.....

Judge of the Blackfeet Indian
Court [352]

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Form No. 11

Parole Agreement

Blackfeet Indian Court

Blackfeet Indian Reservation

Blackfeet Indian Tribe

vs.

....., Defendant

I, the undersigned, having served one half the sentence imposed upon me by the above Court on the day of, 19.., for violation of Sec., Chapter, Law and Order Code of the Blackfeet Indian Tribe, for committing the offense of, agree, upon release, not to violate any law or regulation of the Blackfeet Indian Tribe or of the United States, or otherwise wilfully engage in any misconduct during the term of this parole which shall expire on the..... day of, 19...

Agreed.

.....

Prisoner

(Testimony of Leo Kennerly.)

Defendants' Exhibit No. 18—(Continued)

Order of the Court

To the Keeper of the Jail of the Blackfeet Indian
Tribe:

The above named prisoner having signed the foregoing agreement, you are hereby ordered to release him from custody, forthwith.

Dated:

.....

Judge of the Blackfeet Indian
Court [353]

Cross Examination

By Mr. Allan:

Q. Mr. Kennerly, this Law and Order Code is the Criminal Code of the Blackfeet Indian Reservation, is it not? A. That is right.

Q. And it applies and the jurisdiction is concurrent with the District Court of the United States, or in the Tribal Indian Court, is that correct?

A. Why, I guess so,—my interpretation as given us by the Department of the Interior, I think it specifically gives this power to the Tribal Council.

Q. Section fifteen in relation to trespass is a form of provision to prohibit trespassing on cultivated lands, or enclosed lands, isn't that correct?

A. That is right.

(Testimony of Leo Kennerly.)

Q. It has no relation to range country?

A. May I explain why?

Q. No, we will take the regulation as it is. It is your understanding that the District Court of the United States would not have concurrent jurisdiction in matters that are covered by this Law and Order Code? A. That is right.

Q. You could be mistaken about that, could you not? A. It is possible.

Witness excused.

Defendants rest.

The Court: Any rebuttal?

Mr. Allan: Yes. [354]

Whereupon

ALBERT E. STEPHENSON

was recalled in rebuttal and testified as follows:

Direct Examination

By Mr. Allan:

Q. Will you point out the fenced portion in relation to the Onstad cattle, on the range that we have been discussing here in relation to the Black-foot Indian country?

A. I will have to identify that from the plat.

Mr. Allan: Well, I will call Mr. Girard.

Witness excused.

Whereupon

CHARLES GIRARD,

a witness recalled in rebuttal, testified as follows:

Direct Examination

By Mr. Allan:

Q. Will you point on the map with reference to the plat here, the fenced portion of the land that was used by the Onstad cattle?

A. It is, 3610 here (Indicating).

Q. That is 3610 on exhibit two?

A. It takes in sections seventeen and eighteen; fenced in here (Indicating). There is a lot or two in there that is under farm, but the rest of that up in there; it is patented land.

Q. And how much of that land is fenced?

A. I would say two sections and a half, approximately.

Q. In relation to the Lewis land, to the Fred Lewis land, how much of that land is fenced?

A. All in Unit twenty-nine is under fence which is [355] the Fred Lewis Unit; they run cattle and horses, on Unit twenty-nine.

Q. And are there any particular Units that you have in mind that are in this vicinity?

A. Unit one eighteen is under fence.

Q. What about the land around Buffalo Lake?

A. The land around Buffalo Lake, the south boundary of Unit twenty-eight, twenty-seven, thirty-two, and one twenty-eight is fenced, the south boundary. Then the east boundary of one twenty-

(Testimony of Charles Girard.)

eight is fenced, and there is a fence between Unit twenty-seven and thirty-two running north and south. Unit one seventy-seven is under fence, and this hundred and thirteen, Unit eighty-one, Unit number two, Unit forty-five, part of Unit one sixty-six is fenced. I think that is about all I can recall offhand.

Cross-Examination

By Mr. McCabe:

Q. How many Units are there altogether in the Blackfeet Indian Reservation?

A. Well, under the new terms there would be some three hundred and twenty or three hundred and twenty-five, I think they are not all completed and we don't know for sure.

Q. And the only ones that have been fenced entirely around or part of them, are the Units you have enumerated, that you have spoken of?

A. There is some more land around, but I cannot recall it offhand that is under fence.

Q. But this land that is under fence, is further [356] removed from Unit number twelve, is it not?

A. This land along here, which is along the south boundary of number twenty-seven, twenty-eight and thirty-two one hundred and twenty-eight, which lies north of Unit twelve a mile and a half there is fenced and goes on south to the river from Unit twelve. The land along the river is fenced, the ranches on the Cut Bank Creek.

Q. And that is fenced on how many sides to the south boundary of sections twenty-seven,

(Testimony of Charles Girard.)

twenty-eight, thirty-two and one hundred and twenty-eight?

A. The fence starts here (indicating) on the north and south line between thirty-two.

Q. That is down to the south boundary of those units?

A. Yes, this is the Fred Lewis fence. The boundary between twenty-eight and twenty-nine is the Fred Lewis fence which goes down to the south end of unit twenty-nine.

Q. Is that a surrounding fence, or just fenced on one side?

A. Unit twenty-nine is fenced completely.

Q. And that is away up in township eleven?

A. Yes, in township thirty-five, range eleven.

Q. Range eleven? A. Yes.

Q. And this land involved in this action is all in townships nine and ten, thirty-four and thirty-five north, ranges nine and ten?

A. It is fenced here. (Indicating.)

Q. And that is just on one side of those units, the fence is on the south side of the units, thirty, [357] twenty-seven, thirty-two and one hundred and twenty-eight, is the only side fenced.

A. On Unit one hundred and twenty-eight there is some of it that is not under fence, but the greatest part of it is under fence.

Q. So that there is an open fence on some side?

A. It is not open fence, it is enclosed to the east, and south and west.

Q. When did you examine the fence last?

(Testimony of Charles Girard.)

A. I have been through that country for the last five years.

Q. In 1941, did you observe that fence as to its condition?

A. Some of that is new fence which has been put in in the last three or four years.

Q. So that in 1941, at the time the alleged trespass, there was a part of this that was not fenced at all?

A. This was all fenced here (indicating).

Q. Just on the south side and west side?

A. This fence has been there for some years.

Q. On the south and west sides?

A. Most of it on the east side has been there for some time.

Q. How many miles of fencing would you say there is on the east and south and west sides of those units, numbers twenty-eight, twenty-seven, thirty-two and one hundred and twenty-eight?

A. I haven't got it figured up, I would have to stop to figure it.

Q. Just approximately. Just give us an approximation? [358]

A. There must be thirty miles or more of fencing in there.

Q. And in 1941, did you ride all around that thirty miles of fence?

A. Well, I have been through the country for years. I live there. I know the country from one part to the other. I never made a special trip around to see how much fence was there.

(Testimony of Charles Girard.)

Q. So that whether or not that fence was all up at the time, in 1941 or not, you don't know?

A. There is bound to be some down, I guess.

Q. You don't know whether it was all kept up, or some of it came down?

A. I know some of these Units always kept their fence up, in order to keep stock out. Some of this is old fence around here (Indicating).

Mr. McCabe: May I ask this question, a question that I overlooked this morning?

The Court: Yes.

Q. Did you say that Mr. Connolly, this morning, had Swanson's cattle in 1942?

A. The cattle were out there, I never made any notes on it. I could have been wrong on the date, I don't have any notes on it.

Government rests.

The Court: How much time will you want to furnish briefs.

Mr. Allan: I would like to have at least thirty days after we receive the transcript to [359] furnish our brief.

The Court: We will make it thirty days on a side. If Mr. Allan is crowded he will be allowed more time, of course.

That is all.

[Endorsed]: Filed Sept. 20, 1944. [360]

Thereafter, on September 20, 1944, a Designation of Contents of Record on Appeal was duly filed herein, in the words and figures following, to-wit:

[361]

In the District Court of the United States
In and For the District of Montana
Great Falls Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BIRAN CONNOLLY and DANIEL CONNOLLY,
Defendants.

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL OF DEFENDANTS BRIAN
CONNOLLY AND DANIEL CONNOLLY

Whereas, the defendants Brian Connolly, also known and referred to as Biran Connolly, and Daniel Connolly, have heretofore filed Notice of Appeal in the above entitled action to the United States Circuit Court of Appeals of the Ninth Circuit from the Judgment rendered and entered in the above entitled action on the 24th day of December, 1943:

Now Therefore, the said appellants do hereby designate the following portions of the record, proceedings and evidence to be contained in the Record of Transcript on Appeal of the above entitled cause on appeal and respectfully request same be incorporated in the said Transcript on Appeal, to-wit:

1. Plaintiff's Complaint.
2. Summons, and the Order of the Court to show cause, dated November 22, 1941.
3. Preliminary injunction.
4. Separate answer of Daniel Connolly.
5. Amended answer of Brian Connolly.
6. Motion of Plaintiff to strike parts and portions of the amended answer of Brian Connolly.
7. Order granting and allowing motion of Plaintiff to strike portions of amended answer of Brian Connolly. [362]
8. Petition for Order modifying injunction.
9. Order modifying injunction.
10. Transcript of the proceedings at the trial of said cause, including and embracing all testimony given and offered and all rulings of the Court and all exhibits offered in evidence at said trial.
11. Written opinion of the Court.
12. Court's Findings of Fact and Conclusions of Law.
13. Judgment.
14. Writ of Injunction.
15. Notice of Entry of Judgment.
16. Notice of intention of Daniel Connolly to move for a new trial.
17. Motion of Daniel Connolly for a new trial.
18. Notice of intention of Brian Connolly to move for a new trial.
19. Motion of Brian Connolly for a new trial.
20. Affidavit of Brian Connolly in support of motion for a new trial.
21. Order denying motions for a new trial.

22. Notice of Appeal.

23. Bond on Appeal.

24. Entry on Civil docket as to names of parties to whom Clerk mailed copies of Notice of Appeal and Bond on Appeal with date of mailing.

25. Designation of contents of record on appeal.

26. Please endorse respective dates of filing of the foregoing several proceedings in the above Court.

Dated this 20th day of September, 1944.

E. J. McCABE

S. J. RIGNEY

Attorneys for Appellants Brian Connolly and Daniel Connolly. [363]

[Title of District Court and Cause.]

AFFIDAVIT OF MAILING

United States of America,
State of Montana,
County of Cascade—ss.

E. J. McCabe, being first duly sworn, upon his oath deposes and says:

That he is one of the attorneys of record for the defendants in the above entitled action and resides and maintains his office at Great Falls, Montana; and

That John B. Tansil, United States District Attorney for the District of Montana is the attorney for the plaintiff in said action and resides and maintains his office at Billings, Montana;

That affiant on the 20th day of September, 1944, placed a true copy of the annexed Designation of Contents of Record on Appeal of Defendants Brian Connolly and Daniel Connolly in a securely sealed envelope addressed to said John B. Tansil, Esq., United States District Attorney, Billings, Montana, and deposited said envelope, with postage thereon fully prepaid, in the United States Post Office at Great Falls, Montana, for transmission and delivery in due course of mail to the above named attorney for plaintiff.

E. J. McCABE

Subscribed and sworn to before me this 20th day of September, 1944.

[Seal] PEARLIE E. LAULO

Notary Public for the State of Montana. Residing
at Great Falls, Montana.

My commission expires April 28, 1945.

[Endorsed]: Filed Sept. 20, 1944. [364]

Thereafter, on September 23, 1944, a Stipulation to Amend Bond on Appeal was duly filed herein, in the words and figures following, to-wit: [365]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed by and between the parties to the above entitled action by and through their respective attorneys that the annexed certificate of L. A. Boe, as deputy assessor of

Glacier County, Montana, may be attached to the bond on appeal heretofore filed in the above entitled action by the Defendants and Appellants, Brian Connolly, also known as Biran Connolly, and Daniel Connolly, as a substitute and corrected certificate in lieu of the certificate executed by Assessor Edward Murphy and for the purpose of correcting an error in value of property of Jack Loring stated in said certificate of Assessor Edward Murphy.

Dated this 22nd day of September, 1944.

E. J. McCABE

S. J. RIGNEY,

Attorneys for defendants and
appellants.

JOHN B. TANSIL

United States Attorney.

By MERLE C. GROENE

Assistant United States
Attorney. [366]

State of Montana,
County of Glacier—ss.

I, L. A. Boe, do hereby certify and declare, as follows, to-wit:

That I am the duly appointed, qualified and acting Deputy Assessor of Glacier County, Montana, and that Ida Johnson Connolly and Jack Loring, the Sureties named in the within and foregoing Bond on Appeal, appear as owners of real estate and personal property upon the assessment and tax records of Glacier County, Montana, in value as

follows: Ida Johnson Connolly, the sum of Eleven Hundred Twenty (\$1120.00) Dollars, Jack Loring, the sum of Thirty Eight Hundred and Thirty-five (\$3835.00) Dollars.

In Witness Whereof, I hereunto subscribe my name as Deputy Assessor aforesaid on this 20th day of September, 1944.

L. A. BOE

Subscribed and sworn to before me this 20th day of September, 1944.

[Seal] S. J. RIGNEY

Notary Public for the State of Montana, residing at Cut Bank.

My commission expires Feb. 6, 1945.

[Endorsed]: Filed Sept. 23, 1944. [367]

In the District Court of the United States
In and For the District of Montana
Great Falls Division

CLERK'S CERTIFICATE TO TRANSCRIPT
OF RECORD

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to The Honorable, The United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 368 pages, numbered consecutively from 1 to 368

inclusive, constitutes a full, true and correct transcript of all portions of the record in case number 305, United States of America vs. Brian Connolly and Daniel Connolly, designated by the parties as the record on appeal therein, as appears from the original records and files of said court in my custody as such Clerk.

I further certify that the costs of said transcript amount to the sum of Sixty and 40/100ths (\$60.40) and have been paid by the appellant.

Witness my hand and the seal of said court at Great Falls, Montana, this 4th day of October, A. D. 1944.

[Seal]

H. H. WALKER,

Clerk, U. S. District Court,
District of Montana.

By C. G. KEGEL
Deputy.

[Endorsed]: No. 10890. United States Circuit Court of Appeals for the Ninth Circuit. Brian Connolly and Daniel Connolly, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Montana.

Filed October 9, 1944.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10890

BIRAN CONNOLLY and DANIEL CONNOLLY,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

DESIGNATION OF PARTS OF THE RECORD
TO BE PRINTED AND STATEMENT OF
POINTS ON WHICH THE APPELLANT
BIRAN CONNOLLY INTENDS TO RELY
ON APPEAL

To the Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit:

I.

You will please be advised that the appellant Biran Connolly, also known as Brian Connolly, does hereby designate for printing in the appeal of the above case the entire transcript of the record forwarded to you by the Clerk of the United States Court for the District of Montana in the above entitled action, together with this designation of parts of the record to be printed and the statement of points on which the appellant intends to rely on appeal filed in the above entitled action on appeal.

II.

The above named appellant Biran Connolly, also

known as Brian Connolly, does hereby make and file this statement of points on which he intends to rely on appeal of the above action: 1. The complaint in this action, in brief, charges the two appellants, defendants below, members of the Blackfeet Indian tribe and wards of the United States, with willfully causing and allowing approximately two hundred sixty head of cattle and seventy five head of horses owned by them to trespass upon certain allotted lands and premises, particularly described, of the Blackfeet Indian Reservation in Montana. Compensatory damages for injury to lands and grasses growing thereon and injunctive relief was prayed.

The amended answer of appellant Biran Connolly denied the trespass and for further affirmative defenses alleged substantially the following:

(a) That he owned an "on and off" grazing permit from appellee which in effect permitted him to graze 255 head of cattle for a twelve month period or 510 head of cattle for a six month period on lands within said Indian Reservation and that he in fact grazed not to exceed 309 head on such land for not more than six months, and that during the time alleged in the complaint he had other additional lands in his possession and control for pasturing and grazing his livestock and if any of his livestock entered upon other land on the reservation same did so without his knowledge, and in any event the total number of such livestock did not exceed the number defendant had the right to graze upon the said Indian Reservation.

(b) That the lands described in the complaint as having been trespassed upon are open unfenced lands chiefly valuable for grazing purposes and that he had a vested right, in common with all other members of the Blackfeet Tribe, to permit livestock owned individually to graze upon all unfenced land of the Blackfeet Indian Reservation by virtue of the treaty of 1855 made between the United States and the Blackfeet Indian Tribe and that such grazing right in members of the tribe has been at all times since recognized by the Appellee and said Tribe until the commencement of the above action.

(c) That from time immemorial there has been a well established custom recognized as law among the members of the Blackfeet Indian Tribe of each tribal member having a vested right of allowing his livestock to roam at large and graze upon the unfenced lands to which the tribe claimed the right of occupancy and that such right is a valuable one, the exercise of which is guaranteed to said Biran Connolly as a member of said tribe, by the constitution, treaties and laws of the United States.

The trial court, upon motion of the Appellee, struck from the amended answer the allegations showing it was the custom and practice of the United States and permittees under "on and off" grazing permits of the character of the Biran Connolly grazing permit to increase the number of livestock grazed by the permittee proportionately as the actual grazing period of livestock was decreased in each twelve month period, and the trial

court also struck from said amended answer the allegations of the existence of the right of Biran Connolly guaranteed by the said Treaty of 1855 and struck the allegations of the existence of the long established custom among the Blackfeet Indians, recognized as a tribal law, that any tribal member had a vested right to allow his livestock to roam at large and graze upon unfenced lands to which the Blackfeet Indian Tribe had the right of occupancy. At the trial the lower court would not permit appellant to introduce any evidence of the stricken allegations and therefore the said appellant will urge on appeal that the action of the trial court in striking said allegations and in refusing evidence in support thereof to be introduced at the trial committed prejudicial error.

2. The complaint alleged a willful trespass of livestock owned by appellants. The evidence showed that at times some livestock bearing Biran Connolly's brand was seen upon the lands alleged as being allotted lands, and at times some livestock bearing Daniel Connolly's brand was seen upon the land. The evidence failed to show that such livestock were intentionally driven or intentionally allowed by such persons to graze upon the allotted lands, in fact the evidence is uncontradicted that when informed that livestock owned by appellant were on allotted land appellant removed same and that appellant instructed his children to ride the range every day and keep his livestock on his own range land and to return immediately any straying livestock to his own range and that both appellant

and children followed this practice. Appellant will urge on appeal that there was a failure of proof of the allegations of the complaint.

3. No place in the complaint indicates that the Appellee was seeking a judgment of penalty for trespass under the Act of March 1, 1901, ch. 676, Sec. 37, 25 U.S.C.A. 179, but the court in an action seeking injunctive relief for willful trespass and compensatory damages rendered judgment against Appellant for a penalty of \$258.00 notwithstanding the evidence failed to show 258 head of Appellant's livestock had been driven or conveyed to feed upon land belonging to an Indian or Indian Tribe without the consent of such Tribe as is expressly required by said section. The Appellant will urge that such judgment is contrary to law and the evidence in that the action essentially was one for equitable relief and compensatory damages and not for punishment by a penalty and that the evidence will not sustain a judgment for a penalty against Appellant.

4. That the judgment in part imposes a penalty upon Appellant for livestock owned according to the evidence by a co-defendant, Daniel Connolly, and is contrary to law.

5. That the evidence is wholly insufficient to sustain the judgment for an injunction or for the recovery of money or costs because no willful trespass or threatened trespasses by Appellant were shown and judgment for a penalty was imposed in an action brought for equitable relief.

6. That under the Wheeler-Howard Act and

the constitution and by-laws of the Blackfeet Indian Tribe and the code of laws duly adopted by said Tribe the Appellant was not guilty of any trespass.

7. That Appellant was led by the complaint in the action and was advised by his attorney that the action was equitable in character and not for a penalty and Appellant was not entitled to ask for jury trial and Appellant was thereby deprived of his right to exercise the privilege of asking for a jury to try the issues of fact in an action to enforce a penalty under the pertinent statute of the United States.

8. That each and all of the trial court's Findings of Fact numbered III providing "that the lands and premises, on which defendant, Brian Connolly, had said grazing rights and privileges, were in no wise involved or made the subject of this action" is contrary to the evidence and the law.

9. That each and all of the trial court's Findings of Fact numbered IV, V, VI and VII are contrary to the evidence and the law.

10. That each and all of the trial court's conclusions of law numbered 1, 2, 3 and 4 are contrary to the evidence and the law.

11. That the judgment of the trial court is unsupported by the pleadings and the evidence in the case.

12. That the Appellant suffered prejudicial error by the trial court's failure to grant his motion for a new trial wherein and whereby the various legal propositions herein above stated were called

to the lower court's attention to enable a correction of the manifest prejudicial errors committed by the court.

III.

By filing this statement of points the Appellant, Biran Connolly, in said action does not intend to waive the right to urge error upon appeal any of the rulings or findings of the trial court resulting in a judgment in said cause in favor of the plaintiff and against the defendant.

Dated this 18th day of October, 1944.

E. J. McCABE

S. J. RIGNEY

Attorneys for Appellant

Biran Connolly.

(Affidavit of Service attached.)

[Endorsed]: Filed Oct. 23, 1944. Paul P. O'Brien, Clerk.

[Title of District Court and Cause.]

DESIGNATION OF PARTS OF THE RECORD
TO BE PRINTED AND STATEMENT OF
POINTS ON WHICH THE APPELLANT
DANIEL CONNOLLY INTENDS TO
RELY ON APPEAL

To the Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit:

I.

You will please be advised that the appellant

Daniel Connolly does hereby designate for printing in the appeal of the above case the entire transcript of the record forwarded to you by the Clerk of the United States Court for the District of Montana in the above entitled action, together with this designation of parts of the record to be printed and the statement of points on which the appellant intends to rely on appeal filed in the above entitled action on appeal.

II.

The above named appellant Daniel Connolly does hereby make and file this statement of points on which he intends to rely on appeal of the above entitled action:

1. The complaint in this action, in brief, charges the two Appellants, defendants below, members of the Blackfeet Indian Tribe and wards of the United States, with willfully causing and allowing approximately two hundred sixty head of cattle and seventy five head of horses owned by them to trespass upon certain allotted lands and premises, particularly described, of the Blackfeet Indian Reservation in Montana. Compensatory damages for injury to lands and grasses growing thereon and injunctive relief was prayed.

The answer of Appellant Daniel Connolly denied the alleged trespass.

2. The complaint alleged a willful trespass of livestock owned by Appellants. The evidence showed that at times some livestock bearing Biren Connolly's brand was seen upon the lands alleged as being allotted lands, and at times some livestock

bearing Daniel Connolly's brand was seen upon the land. The evidence failed to show that such livestock were intentionally driven or intentionally allowed by such persons to graze upon the allotted lands, in fact the evidence is uncontradicted that when informed that livestock owned by Appellant were on allotted land Appellant removed same and that Appellant will urge on appeal that there was a failure of proof of the allegations of the complaint.

3. No place in the complaint indicates that the Appellee was seeking a judgment of penalty for trespass under the Act of March 1, 1901, ch. 676, Sec. 37, 25 U.S.C.A. 179, but the court in an action seeking injunctive relief for willful trespass and compensatory damages rendered judgment against Appellant for a penalty of \$258.00 notwithstanding the evidence failed to show 258 head of Appellant's livestock had been driven or conveyed to feed upon land belonging to an Indian or Indian Tribe without the consent of such Tribe as is expressly required by said section. The Appellant will urge that such judgment is contrary to law and the evidence in that the action essentially was one for equitable relief and compensatory damages and not for punishment by a penalty and that the evidence will not sustain a judgment for a penalty against Appellant.

4. That the judgment in part imposes a penalty upon Appellant for livestock owned according to the evidence by a co-defendant, Biran Connolly, and is contrary to law.

5. That the evidence is wholly insufficient to sustain the judgment for an injunction or for the recovery of money or costs because no willful trespass or threatened trespasses by Appellant were shown and judgment for a penalty was imposed in an action brought for equitable relief.

6. That under the Wheeler-Howard Act and the constitution and by-laws of the Blackfeet Indian Tribe and the code of laws duly adopted by said Tribe the Appellant was not guilty of any trespass.

7. That Appellant was led by the complaint in the action and was advised by his attorney that the action was equitable in character and not for a penalty and Appellant was not entitled to ask for jury trial and Appellant was thereby deprived of his right to exercise the privilege of asking for a jury to try the issues of fact in an action to enforce a penalty under the pertinent statute of the United States.

8. That each and all of the trial court's Findings of Fact numbered III providing "that the lands and premises, on which defendant, Brian Connolly, had said grazing rights and privileges, were in no wise involved or made the subject of this action" is contrary to the evidence and the law.

9. That each and all of the trial court's Findings of Fact numbered IV, V, VI and VII are contrary to the evidence and the law.

10. That each and all of the trial court's conclusions of law numbered 1, 2, 3 and 4 are contrary to the evidence and the law.

11. That the judgment of the trial court is unsupported by the pleadings and the evidence in the case.

12. That the Appellant suffered prejudicial error by the trial court's failure to grant his motion for a new trial wherein and whereby the various legal propositions herein above stated were called to the lower court's attention to enable a correction of the manifest prejudicial errors committed by the court.

III.

By filing this statement of points the Appellant, Daniel Connolly, in said action does not intend to waive the right to urge error upon appeal any of the rulings or findings of the trial court resulting in a judgment in said cause in favor of the plaintiff and against the defendant.

Dated this 18th day of October, 1944.

E. J. McCABE

S. J. RIGNEY

Attorneys for Appellant
Daniel Connolly.

(Affidavit of Service attached.)

[Endorsed]: Filed Oct. 23, 1944. Paul P.
O'Brien, Clerk.

